IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 366 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARJIVANBHAI POPATLAL PATEL
Versus
STATE OF GUJARAT

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Appearance :
MRS KRISHNA V BAROT for Appellant
MR HRIDAY BUCH for Appellant
MR SS PATEL APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 06, 07, 09, 10, 11 and 12/10/2006

ORAL JUDGMENT

Date: 06.10.2006

[**1**] The instant appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 and is directed against the judgment and order dated 25th May, 1989 delivered by learned Special Judge, Surat in Special Case No.2/1988 whereby the present appellant came to be convicted for the offences punishable under Section 161 of the Indian Penal Code as well as under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, 1947. For the offence punishable under Section 5(2) of the Prevention of Corruption Act, 1947, the appellant was sentenced to undergo simple imprisonment of one year and to pay fine of Rs.1000/- and in default to undergo simple imprisonment of one month, while no separate sentence was imposed upon the appellant for the offence punishable under Section 161 of the Indian Penal Code.

[**2**] The facts leading to the prosecution against the appellant can be stated as under:-

[**2.1**] The appellant at the relevant juncture was discharging his duties as a senior clerk in the office of the Housing Board situated at Surat and as such he was public servant. One of his duty was to refund the amount to the applicants to whom the buildings were not allotted to them. He was incharge of various other duties. One Shri Arvindbhai Pranshanker Vaidya, uncle of the complainant Shri Shaileshkumar Thakorlal Vaidya, previously was residing at the town of Bilimora and at that time, in 1981-82, he applied to the Housing Board for allotment of housing in pursuance of M.I.G. Scheme and he deposited the amount of Rs.500/- in Bank of India, Bilimora to be the deposit for the scheme for allotment of housing. As always there were more claimants than the availability of the housing and, therefore, Housing Board arranged a draw for allotting housing amongst the claimants. In the said draw, the appellant – Shri Arvindbhai Pranshanker

Vaidya could not succeed and, therefore, he was informed by the Housing Board vide letter dated 27th March, 1984 that he could not be allotted housing and that he should obtain the amount of deposit by way of refund from the Board. This letter was addressed to Shri Arvindbhai Pranshanker Viadya at Bilimora at his the then address. It appears that in 1981-82, Shri Arvindbhai Pranshanker Viadya shifted to Navsari for his personal circumstances. He had received the above said letter from the Housing Board, but since he had lost the said letter, he could not take any steps to obtain refund of Rs.500/- deposited by him. Somewhere in January, 1988, his nephew, complainant of this case Shri Shaikeshkumar Thakorlal Vaidya, came to Navsari to reside with Shri Arvindbhai Pranshanker Viadya as he was in need of medical treatment to his son. Shri Shaileshkumar Thakorlal Vaidya was doing a job at Surat as Laboratory Assistant in Institution named as “Mantra”. It appears that the letter received from the Housing Board for refund of the deposit might have been found by

Shri Arvindbhai Pranshanker Viadya and before 27th January, 1988, he entrusted all the papers to his nephew Shri Shaileshkumar and requested him to do the needful for obtaining refund of Rs.500/- from the office of the Housing Board situated at Surat. Complainant – Shri Shaileshkumar on 27th January, 1988 visited the office of the Housing Board and met with the appellant, as the appellant was incharge of the affairs. The appellant took all the papers from Shri Shaileshkumar and had been told by the appellant that the case was very old and Shri Shaileshkumar was required to met him after a weeks time. Accordingly complainant Shri Shaileshkumar visited the office of the Housing Board at Surat on 5th February, 1988 to inquire about the refund of his uncle Shri Arvindbhai Pranshanker Viadya. Shri Shaileshkumar met the appellant, the appellant replied that though the papers were searched, but could not be found and advised him to come after three days. Shri Shaileshkumar, therefore, met the appellant on 8th February, 1988 and on that day, according to the case of the

prosecution, the appellant stated to Shri Shaileshkumar that the case was very old and it was not possible to get refund of the deposit. It is further prosecution case that the appellant stated that nevertheless, if the complainant paid money to the appellant for his labour, the appellant would be in a position to obtain refund for the complainant. Thereupon, complainant asked the appellant as to what amount he was required to pay to the appellant. The appellant stated that the complainant was required to pay Rs.25/- to him and further stated that appellant should visit next day along with the authority letter of the uncle of the complainant during 1.30 p.m. to 2.30 p.m. and the work of the complainant would be finished. It is the prosecution case that on next day i.e. on 9th February, 1988, complainant approached ACB Office, Surat at 10.15 a.m. as he was not willing to give any amount to the appellant for obtaining refund. It is the prosecution case that complainant also discussed this aspect with his uncle Shri Arvindbhai Pranshanker Viadya, who also advised him not to

pay money to the appellant and to file complaint before the Anti Corruption Bureau against the appellant. Therefore, when the complainant reached at ACB Office at Surat, he met with Police Inspector Shri Khoda and informed him about the demand of money made by the appellant. Since the complainant was prepared to give complaint, P.I. Shri Khoda recorded his complaint and wrote one yadi to the office of Electrical Inspector, Surat for two panchas. In response to the said yadi, one Shri Shardulsinh Dhokalsinh Champavat and other Shri Bhagwandas Harkishandas Bhavsar, employees of the office of the Electrical Inspector at about 11.40 came in the office of ACB and reported to P.I. Shri Khoda. After following normal procedure, a first part of panchnama was prepared and completed in which the complainant produced an amount of Rs.25/- in three notes, two of domination of Rs.10/- each and one note of Rs.5/-. Head Constable Shri Aadhar Tulsi smeared anthracene powder upon the said muddamal currency notes and the experiment of ultra violet lamp were carried out. The

utility of the anthracene powder as well as of ultra violet lamp had been explained to panchas and to the complainant by Head Constable Shri Aadhar Tulsi. Thereafter, under the instruction of P.I. Shri Khoda, Head Constable Shri Aadhar Tulsi put the said muddamal currency notes in left side bushirt pocket of the complainant. It was ensured that the said pocket of the bushirt of the complainant was kept vacant. P.I. Shri Khoda instructed the complainant – Shri Shaileshkumar that unless and until, the appellant demanded the amount, the complainant was not to touch the said pocket of the bushirt and if at all the appellant made demand then the complainant to pay the muddamal currency notes. It was also instructed that on acceptance of the amount by the appellant, the complainant was to give a signal by coughing. Panch No.1 – Shri Shardulsinh Dhokalsinh Champavat was instructed to remain with the complainant, while panch No.2 – Shri Bhagwandas Harkishandas Bhavsar was to remain with P.I. Shri Khoda and other personnel of police. Head Constable Shri Aadhar Tulsi,

thereafter, secured the anthracene powder, cotton etc. in a cupboard and after burning the paper used for smearing anthracene powder, washed his hands by soap. Ultra violet lamp experiment was, thereafter, carried out. The hands of all of them were found clean. Thus, completing the first part of panchnama, in a Government vehicle, complainant, both panchas, P.I. Shri Khoda and other members of the raiding party reached near the office of the appellant and from Rajkumar Cinema, complainant – Shri Shaileshkumar and panch No.1 – Shri Shardulsinh Champavat walked towards the office of the appellant, which was situated on 2nd Floor of the said building. The members of the raiding party and panch No.2 took their position out side the office of the appellant. According to the prosecution case, when complainant and panch No.1 reached near the table of the appellant, they found the appellant sitting there. The complainant – Shri Shaileshkumar demanded the refund amount, as per the previous talk which had taken place between the appellant and the complainant. The appellant

replied that whether the complainant had brought the money for his labour in pursuance of the talk which they had on previous day. The complainant replied in affirmative. Thereupon, the appellant stated to wait and that he would return shortly and, thereafter, with registers and with one cheque book, he went to the office of the accountant. After sometime, the appellant returned from the office of the accountant and came to his table, conveyed to the complainant that he was called by accountant Shri Topiwala. It is the prosecution case that thereafter, complainant, panch No.1 and appellant all three went to the chamber of accountant Shri Topiwala. Accountant Shri Topiwala stated to the complainant that he was required to give one application detailing that the old cheque was to be cancelled and new cheque to be issued to him. This instruction was given by the accountant Shri Topiwala to the appellant, also that such application was to be obtained from the complainant and, therefore, the appellant, complainant and panch No.1 returned to the table

of the appellant. Thereafter, the appellant in his own handwriting through a ball pen wrote one application as directed by the accountant and he obtained signatures of the complainant on behalf of the uncle of the complainant. Thereafter, the appellant with cheque went to the chamber of officer Shri Shah and returned after sometime to his table. Resuming his seat, appellant asked the complainant as to whether in pursuance of the talk took place between them on previous day, whether complainant had brought the amount of Rs.25/- for his labour. The complainant, thereupon took out the muddamal currency notes from his bushirt pocket and offered to the appellant. The appellant accepted the said muddamal currency notes by his hand and put the same in his (appellant) left side shirt pocket. Thereafter, the appellant tore out the cheque of refund from the cheque book and handed over the same to the complainant, which the complainant – Shri Shaileshkumar after folding the same put in back pocket of the pant. Thereafter, the appellant obtained receipt of the complainant

mentioning the cheque number and date on the application which the appellant had prepared in his own handwriting. The complainant, thereafter, suggested to the appellant that he had brought the authority letter and was prepared to give. The appellant replied that the said authority letter was not needed. The complainant thereupon went out side of the office and gave pre-arranged signal by coughing. After giving signal, complainant again came in the office and reached to the table of the appellant, in the meanwhile, the members of the raiding party, P.I. Shri Khoda and panch No.2 reached at the table of the appellant. P.I.Shri Khoda introduced himself and instructed the appellant to remain as he was. The names and details of the appellant were asked. P.I. Shri Khoda inquired from panch No.1 that what had taken place and, thereafter, P.I. Shri Khoda instructed Head Constable Shri Tulsi to start experiment in ultra violet lamp. Except the complainant and appellant, the hands of all of them were seen in the said ultra violet lamp, but no marks were found in the hands of anybody.

Thereafter, the hands of the appellant were seen in ultra violet lamp, an anthracene power marks were found on the right hand of the appellant. On examining body of the appellant in the said ultra violet lamp, it was found that on left side of the bushirt there were powder marks on brink of the pocket. The powder marks were also found inside the said pocket. Thereafter, panch No.1 was directed by P.I. Shri Khoda to take search of the person of the appellant and during that search, muddamal currency notes of Rs.25/- were found from the left side shirt pocket of the appellant. Those notes were seen and examined in ultra violet lamp and powder marks were found. The numbers of the notes were compared with the first part of the panchnama and they were tallied. From the pant pocket of the complainant, handkerchief, key chain etc. were found, which were not seized, while muddamal currency notes as well as ball pen were found from the shirt pocket of the appellant, were seized. A search of the person of the complainant was also conducted and it was found that the left side shirt pocket of

the complainant was empty and muddamal currency notes were not there. The cheque was found from the back pant pocket of the complainant and at the corner of the said cheque had anthracene powder marks as well as the back pocket of the pant of the complainant had also powder marks. The authority letter was given by his uncle in original was found from the complainant, which was also seized from the complainant. In examination in the light of the ultra violet lamp right hand fingers and thumb of the complainant were found tainted with powder marks. The left side shirt pocket of the complainant was also had powder marks. From there, one old cheque register, cheque book and other papers in respect of refund of his uncle including advance receipt given to the appellant by the complainant were seized by the police. The panchnama of the second part was completed there at about 16.30 hours. Thereafter, at about 19.00 hours, in the office of accountant Shri Topiwala in presence of panchas, one memo of cheque register and one cheque book from which a cheque was issued on 9th

February, 1988 were seized by the police through panchnama and offence came to be registered at the ACB Police Station. The investigation was carried out by P.I. Shri Khoda and he recorded the necessary statements and obtained sanction to prosecute the appellant and he received the said sanctioned on 10th October, 1988 and on the same day, he preferred the charge-sheet against the appellant in competent Court and arrested the appellant.

[**3**] Vide Ex.3, learned Special Judge framed charges levelled against the appellant on 15th April, 1989 for the above said offences to which the appellant denied and pleaded not guilty and hence, the prosecution was asked to tender the evidence to prove its case.

07.10.2006

[**4**] The prosecution examined four witnesses to prove the case. P.W.1 – Shaileshkumar Thakorlal Vaidya is examined at Ex.6, who is complainant, P.W.2 – Shardulsinh Dhokalsinh

Champavat is examined at Ex.14, who is panch No.1 of panchnama at Ex.16, P.W.3 – Arvindbhai Pranshanker Vaidya is examined at Ex.19, who is uncle of the complainant and whose deposit was to be refunded, P.W.4 – Ahmed Mohmmadkhan Khoda is examined at Ex.20, who was the then Police Inspector, ACB Police Station, Surat and investigated the offence.

[**5**] In addition to the above all evidence, the prosecution also tendered documentary evidence in bulk. At Ex.7 application dated 9th February, 1988 was given by the complainant and written by the appellant is produced. At Ex.8 letter dated 27th March, 1984 addressed to P.W.3 - Shri Arvindbhai Pranshanker Vaidya by Housing Board is produced by which it is intimated that Shri Arvindbhai Pranshanker Vaidya was to obtain the amount of deposit paid by him. At Ex.9 cheque issued and delivered to the complainant on 9th February, 1988 is produced. At Ex.10 original authority letter given by P.W.3 - Shri Arvindbhai Pranshanker Vaidya to the complainant

for receiving the refund of Rs.500/- is produced. At Ex.11 the receipt of Bank of India of having paid Rs.500/- by Shri Arvindbhai Pranshanker Vaidya by way of deposit to the Gujarat Housing Board is produced. At Ex.12 an intimation in this respect from the Housing Board to P.W.3 - Shri Arvindbhai Pranshanker Vaidya is produced. Advanced stamp receipt blank and typed on revenue stamp by P.W.3 - Shri Arvindbhai Pranshanker Vaidya and delivered to the appellant by the complainant is produced at Ex.13. Office copy of seizure memo prepared at the time of the raid for the articles seized from the accused is produced at Ex.15 and accused had signed the same in token of having received original copy of seizure memo. panchnama in two parts prepared in presence of panchas is produced at Ex.16. Vide Ex.17 second panchnama by which muddamal article No.16 register was seized by Investigating Officer in presence of panch from accountant Shri Topiwala, is produced. This panchnama was drawn on 9th February, 1988 at about 19.00 hours after the raid was over. By this panchnama, cheque book,

muddamal article No.17 which is a cheque book from which the cheque issued and delivered to the appellant on 9th February, 1988 was also seized. Office copy of receipts of these two articles as signed by Shri Topiwala, accountant is produced at Ex.18. Complaint filed by Shri Shaileshkumar Thakorlal Vaidya before P.W.4 – Shri Khoda is produced at Ex.21, sanction to prosecute the appellant as given by Housing Commissioner on 27th July, 1988 is produced in original at Ex.22. At Ex.23 xerox copy of Ex.10 original letter which was attached with the complaint by the complainant is produced. Vide Ex.24 a report made by P.W.4 – P.I. Shri Khoda to the Commissioner of ACB in Special Case No.1/1984 [not related with the present case] is produced. It appears that in the said report, when panchas of the said Special Case No.1/1984 were not consistent in their depositions, P.I. Shri Khoda reported this matter to the Commissioner of ACB to take action against the panchas of the said case.

[**6**] After the prosecution case was over, a

statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure. In his statement, he admitted that he was serving as a Senior Clerk and was public servant at the relevant juncture. He admitted that the complainant met him about the refund of his uncle on 27th January, 1988 at 1.30 p.m. He admitted that the refund papers were old and were of 1984. He admitted that the complainant met him on 5th February, 1988 and on 4th February 1988 also. He denied other allegations made in the evidence. He denied that he had told the accused to bring the authority letter on 8th February, 1988 and he stated in fact that on 27th January, 1988 itself, he had stated to the complainant to bring the authority letter. In question put to him, he stated that the application Ex.7 was not written by him as stated by the complainant. But after the cheque was delivered to the complainant as instructed by Shri Topiwala, he requested the complainant to write an application and the complainant told him that he could not write. The accused stated that therefore, he wrote the

application. He further explained that when he wrote the application, the cheque had already been delivered to the complainant and from that cheque the details were written in the application at Ex.27 and the writing of the body of the application and the receipt below that were written by him at the same time and, thereafter, raid was carried out. In the question put to him that whether the appellant wanted to say anything further, he stated as under:

> “As I have said before the case of the uncle of the complainant was very old. Even then till 5th February, 1988, I had completed all the procedures relating to the case after searching out the papers. On 4th February, 1988 and on 5th February, 1988, our Assistant Manager Shri Shah was in district and he resumed the office in the afternoon on 5th February, 1988. I had instructed the complainant to come on 5th February, 1988 in the afternoon. That was not convenient to the complainant

and, therefore, I had instructed him to come on 6th February, 1988. The complainant had visited me on 6th February, 1988, but he had not brought authority letter which I told him to bring. I told him that why the complainant had come without authority letter. On account of this, I had hot conversation with the complainant and complainant had said to me that I was making him coming to the office frequently and on 9th February, 1988 raid was arranged. On 8th February, 1988, complainant had not come to me and no conversion had taken place between me and complainant as stated by him. On the day of the raid I had inquired from the complainant as to whether he had brought the authority letter which he stated that he had brought the same and was lying in Luna parked near the building and which he would bring after going down. This false case is filed against me. I am

innocent. I have not demand bribe nor I have accepted the bribe after demanding the same."

The appellant accused denied to examine defence witness. But he submitted his written statement which is at Ex.26. Free translation of the explanation given in writing by the appellant is as under:

"I accused is innocent. I accused has not committed any crime.

I accused was demanding right from 27th January, 1988 authority letter of his uncle and on that day, I had also searched old record. On 4th February, 1988, Estate Manager was in district and, therefore, without his signature, old cheque which was ready in the name of the uncle of the complainant would not be cancelled and, therefore, the complainant was called again on 5th February, 1988. On that day also, Estate manager was in

district and was to come in the afternoon and hence, the signature of Divisional Accountant Shri Topiwala was obtained on 5th February, 1988 on necessary papers and in cheque. This muddamal produced in the Court, which may be taken into consideration. On 5th February, 1988, complainant came before recess and at that time Estate Manager still had not resumed the office and was to come in the afternoon. I instructed the complainant to come in the evening on that day, but he refused to come in the evening on that day. Accordingly on 5th February, 1988, when Estate Manager resumed the office in the afternoon, his signature was obtained on necessary papers and cheque. The old cheque could not have been cancelled without the signatures of the above two officers and till then no procedure could be initiated to issue new cheque.

The complainant came on 6th February,

1988, on that day had he brought authority letter, he would have obtained cheque for refund. But the complainant had not brought authority letter. On that day, my daughter was sick, I was in mental depression and complainant was frequently coming to the office and was not bringing the authority letter and, therefore, I scolded complainant which the complainant did not like.

According to the procedure of our office, the cheques to be issued were handed over to the claimants by our Divisional Accountant. The cheques were not to be handed over to the applicants by refund clerk and in this incident, I have not delivered the cheque to the complainant, but Shri Topiwala delivered the cheque to the complainant. In both the cheques new and old and in the memo of register, all the handwritings are of Shri Topiwala.

In the office of Surat, I was working for various duties as per list attached and, thereafter, I was entrusted additional work of refund. In addition to this, I was doing the work of selling of forms of scheme and correspondence. I produced herewith xerox copy of the Form No.28 which I had prepared on 9th February, 1988 and the duties discharged by me in respect of refunds.

In Form No.2, the signature of the complainant was to be obtained in advance stamp receipt, was to be filled in and when I demanded authority letter, the complainant replied that the same was lying in Luna and saying so he walked away.

The cheque next to the cheque of the uncle of the complainant was coming under of my duties, which was cancelled as per the say of the ACB and on that very day,

the cheque was issued to Shri R.B.Mehta on behalf of Shri Maheshkumar B. Mehta. The counter foil of the said cheque book and xerox entries of cash book is produced herewith.

I was selling forms and was depositing the amount of the forms and receipts of the same are attached herewith.

It is requested that the necessary documents be taken into consideration."

[**7**] Before contentions of learned advocates for the parties are noted, it would be appropriate to note the gist of the evidence recorded by the trial Court. P.W.-1 Shri Shaileshkumar Thakorlal Vaidya, Ex.6 stated that during 27th January, 1988 to 9th February, 1988, he was residing with his uncle at Navsari in the Staff Quarters situated at Navsari. His uncle was serving in Cotton and Silk Mill and was assigned the said quarter. He stated about the application

filed by his uncle for allotment of the house and he was not allotted, he was entitled for the refund. He stated that from Bilimora, his uncle shifted to Navsari and the said letter for the refund in 1984 received by him was lost and, therefore, his uncle could not obtain refund of an amount of Rs.500/- from the Housing Board. The complainant stated that at the relevant juncture, he was serving as Technical Assistant at Surat and was commuting from Surat to Navsari. He stated that since he was commuting from Surat to Navsari, his uncle entrusted the work for obtaining an amount of refund from the concerned department. He stated about his meeting with accused on 27th January, 1988, as stated earlier in the prosecution case. He stated that he also submitted advance stamp receipt to the appellant. He stated about his visit to the appellant on 5th February, 1988 wherein appellant instructed him to come after 2-3 days. The complainant stated about his visit on 8th February, 1988 to the appellant wherein the appellant demanded the amount of Rs.25/- for issuance of refund amount

as the case was very old. He stated about the filing of the complaint on 9th February, 1988 after discussing with his uncle. He stated that on 8th February, 1988, the appellant had also instructed him to bring authority letter of his uncle which he got prepared on 8th February, 1988 in the evening. On 9th February, 1988, he reached at ACB Office and filed the complaint and copy of the authority letter also was produced before ACB Inspector and was attached to the complaint and he stated that when panchas were called, the procedure as per the panchnama had taken place in pursuance of the first part of the panchnama. He stated about the fact that first he and panch No.1 reached to the appellant and others raiding party members remained with the office of the appellant. On approaching the appellant, he inquired about the refund and the appellant stated that whether the complainant had brought the amount of his labour. On giving positive reply, the appellant went in the office of Shri Topiwala with two registers, cheque book etc. and came back. As per the instruction of the

appellant, he and panch No.1 went to the chamber of Shri Topiwala, wherein Shri Topiwala instructed them to give an application for issuance of new cheque. Thereafter, the appellant went to the office of Shri Shah and came back. When he came back, he demanded the amount of Rs.25/-, which the complainant paid in shape of muddamal currency notes. The currency notes were pocketed by the appellant. Thereafter, the appellant himself wrote an application and a receipt of the cheque below it, obtained signatures of the complainant on behalf of his (complainant) uncle. Thereafter, the complainant asked about the authority letter and the appellant stated that the same was not necessary. On giving signal, raid was carried out and according to the complainant, the amount of currency notes was found from the pocket of the appellant. His search was also carried out and from his back pocket pant, the muddamal currency notes were found and examined in ultra violet lamp and the hands of the appellant and the hands of the complainant were also examined in ultra

violet lamp and were found with anthracene powder marks and that muddamal currency notes were also found with anthracene powder marks. The cheque which he had received also had powder marks at the corner. He stated that as per the seizure memo, P.I. Shri Khoda seized articles from the accused – appellant and prepared a seizure memo and obtained a receipt of the same.

In his cross-examination, in para-28, he admitted that the letter Ex.8 was received by his uncle at Bilimora. In para-29, he stated that on 9th February, 1988 from Railway Station, he straightway went to the ACB Office and got xerox copy of the authority letter, though no such instruction was given to him. He explained that if he had to give original authority letter, it was in the fitness of the thing to have a copy of it. In para-30, he was asked whether a copy of the FIR was given to him. He replied in positive and stated that during search, the said copy was not found from him. In para-31, he stated that he used to go to the office of the appellant on

cycle. He admitted that in the said room where the appellant was sitting, other 34-35 employees were sitting. He stated that he could not say the size of the table of the appellant. He stated that there was nobody else except he and appellant where conversation took place between them on 27th January, 1988. He could not say that just opposite appellant, any employee was sitting. There were some other tables at some distance from the table of the appellant. He stated that he could not say whether at the relevant time, any employee was sitting on respective table. He admitted that in the back of the appellant also, a table was fixed. He stated that when he first met to the appellant and gave him the papers, he stood up and went to some other employee for inquiry and that employee was sitting on his left side. After returning from there, the appellant stated to him to come after one week. In para-32, the complainant stated that he conveyed to the appellant that Shri Arvindbhai Pranshanker Vaidya was his uncle but he did not convey that his uncle, had shifted to Navsari

from Bilimora. In para-33, he denied that the appellant asked about the advance receipt forwarded with the papers to his uncle. The appellant did not say that the application could not be found, but old cheque was found. He denied the suggestion that on 27th January, 1988 along with the appellant, he visited the chamber of Shri Topiwala. He denied the fact that the appellant told him to bring the authority letter on 6th February, 1988. In para-34, he stated that he visited the appellant on 5th February, 1988. He denied the suggestion that the appellant told him that old cheque and papers were traced out, but the Estate Manager was on leave and instructed him to come on the next day. He stated that till the incident of raid, he did not know that old cheque was required to be cancelled and that application was required to be preferred. In para-35, he denied the suggestion that he visited the appellant on 5th February, 1988 because that was stated by the appellant on 4th February, 1988. He denied the suggestion that at that time, the appellant told him that the old cheque is traced

and to invalidate the same, the signature of Shri Topiwala was obtained and since the Estate Manager was in the district and could come in the afternoon, his signature was to be obtained. He denied the suggestion that the appellant told him that if he comes in the afternoon or in the evening than after invalidating the old cheque, new cheque would be issued to him. He denied the suggestion that he told the accused that it was not convenient for him to visit in the evening and, therefore, he stated that he would visit on the next day. In para-36, he denied the suggestion that he visited the accused on 6th February, 1988, the appellant called him to see the entry in receipt of invalidating of the old cheque. He denied the suggestion that on that day, since he had not brought authority letter, the cheque was not issued to him. In para-37, he admitted that on 27th January, 1988 and 25th February, 1988, when he visited the appellant, the appellant did not demand any amount. In para-38, he was asked about whether any employee was present in the office when he visited the

appellant on 8th February, 1988. He replied that he could not say. In para-39, contradiction is asked and he admitted that he did not say in his complaint or before the police statement that on 8th February, 1988, the appellant told him that the case was very old and it was not possible to issue refund. He also admitted that he did not say anything in his complaint or in his police statement that he told the appellant that if the work could be done without money, the same was requested to be done. He admitted that in his complaint or in his statement before the police, he did not say that the accused replied that his work would not be done. In para-40, he stated that on 8th February, 1988, the conversation with the appellant was conveyed by him to his uncle and, thereafter, he thought to file complaint before ACB Police Station. His uncle was also advised him to get the accused – appellant arrested under Prevention of Corruption Act. He admitted that at that time, his uncle was offering to him an amount of Rs.25/-, but he told that the said amount was with him. He further

stated in para-41 that what was the situation when they came out from the ACB Office and reached at the office of the appellant. He was asked about the location of the table of the appellant and other tables and chamber of Shri Topiwala. He denied the suggestion that on that day, since the accused knew that he visited the accused – appellant for refund of his uncle. It was not necessary for him to ask about the refund to his uncle for the appellant. In para-42, he stated that on the day of the incident, the appellant did not demand any authority letter from him. He stated that according to him, he only stated to the appellant that he had come to obtain refund, but did not state that whether his work was done. In para-43, he was asked about what was in the hands of the appellant, when he visited in chamber of Shri Topiwala. In para-44, he stated that the appellant stayed for 2 to 4 minutes in the chamber of Shri Topiwala, he did not know what transpired inside the chamber. He stated that it did not happen that the appellant came out from the chamber of Shri Topiwala and

straightway went to the chamber of Estate Manager. He could not say whether and when appellant came out of the chamber, the cheque book and register were with him. He stated that the cheque issued from the cheque book which was delivered to him, the said cheque book was on the table of the appellant. In para-45, he stated that on that day, he was not in a position to say that on which part of the cheque the anthracene powder marks were seen. He admitted that when panchnama was executed, he was sitting inside. In para-46, he stated that till he remembered, he had been to the appellant twice for making his signature. In para-47, he stated that when he reached to the appellant on the day of the incident, he could not say what was the appellant doing nor he could say whether any other applicants standing near appellant. He stated that hedid not know a such person named as Shri R.B.Mehta and he could not say whether such person was present at the table of the appellant. He denied the suggestion that he was making haste and, therefore, the appellant stated that the

work of Shri Mehta and the work of the complainant would be done simultaneously. He denied the suggestion that at that juncture, one person named as Shri Dajibhai Himabhai was present, who was allotted a flat as freedom fighter. In para-48, he denied the suggestion that the cheque Ex.9 was delivered to him by Shri Topiwala in his chamber. He denied the suggestion that the accused did not give him any cheque. He denied the suggestion that after issuing cheque to the complainant, Shri Topiwala directed the appellant to obtain receipt etc. from him. In para-49, he stated that the appellant obtained his signature after detailing cheque number and date, when he went out signature, he did not say anything to the appellant. He could not say that after the cheque was delivered and after his signature was obtained in receipt, the appellant was engaged himself in some other work. In para-50, he denied the suggestion that after delivering the cheque and obtaining receipt, the appellant asked about the authority letter from him. He denied the suggestion that he replied

that the letter was lying in Luna and he would be bringing that and saying that he came out. In para-51, he denied the suggestion that on 8th February, 1988, the accused did not demand any amount from him. He denied the suggestion that on 9th February, 1988, the appellant did not demand any amount from him. He denied the suggestion that the appellant was selling forms of a scheme and one form was costing of Rs.5/-. In para-52, he denied the suggestion that he felt that the accused was making him come to the office now and than and was prolonging the work. He denied the suggestion that on 6th February, 1988, the appellant scolded him and stated that he was not remembering small thing like bringing the authority letter, eventhough he was educated person. He denied the suggestion that for the said reason to teach a lesson to the appellant, the appellant was falsely involved by the complainant in this case.

Date: 09.10.2006

[**8**] P.W.2 – Shri Shardulsinh Dhokalsinh Champavat examined at Ex.14 and he is panch No.1. He stated that at the relevant juncture, he was working as Sub-Inspector in the office of Electrical Inspector at Surat. This office was situated at 6th Floor, C-Block, in Multistoryed Building. Panch No.2 Bhagwandas Harkishandas Bhavsar was also working in his office. On 9th February, 1988, his superior Inspector Shri Vinay Petiwala called him and instructed him that he was required to go at Nanpura in ACB Office with Shri Bhagwandas Harkishandas Bhavsar. It was 11.00 a.m. at that time. Accordingly, he and Shri Bhagwandas Harkishandas Bhavsar started to go to the office of the ACB and reached there at about 11.30 a.m. Thereafter, he stated that he met ACB Inspector, upon his instruction he met with the complainant Shri Shaileshkumar, who declared his grievance. He read the complaint. Upon instruction of P.I. Shri Khoda, a search was carried out by him of the complainant and one authority letter was found from the shirt pocket of the complainant. He stated about presenting

of the muddamal notes by the complainant and about the experiment carried out on notes by Head Constable in respect of ultra violet lamp and anthracene powder. They understood the property and utility of the anthracene powder. He state about putting up those muddamal notes in the shirt pocket of the complainant and the instruction was given by the Inspector to them, raiding party members as well as to the complainant. He stated about reaching at the office of the appellant and demand made by the appellant from the complainant for Rs.25/- for the cheque of the refund. He stated about the appellant went to the chamber of Shri Topiwala and, thereafter, he and complainant both went to the office of Shri Topiwala, who instructed to obtain an application from the complainant for issuance of new cheque. He stated that the said application was written by the appellant. He stated that the appellant, thereafter went to the chamber of Estate Manager and came back. He stated that thereafter, the appellant demanded an amount of Rs.25/-, which complainant gave him the

muddamal currency notes which the appellcant put in his left shirt pocket and the appellant tore out a cheque from the cheque book and delivered the cheque of refund to the complainant, which complainant put in his back pant pocket and, thereafter, the appellant took the signature of the complainant in receipt detailing the cheque numbers, date etc. below application Ex.7. He was also stated that the complainant stated about the authority letter of his uncle, but the appellant replied that the said authority letter was not necessary. He stated that thereafter, on pre-arranged signal, the raid was carried out and recovery of the muddamal currency notes was effected from the shirt pocket of the appellant. He stated that the hands of the appellant and complainant were found tainted with the marks of anthracene powder. He stated that some documents placed on the table of the appellant including application Ex.7 were seized by the police which he identified before the Court. From the complainant, the cheque which was muddamal article No.17 was also seized. He stated that

thereafter, on that day in the evening again vide panchnama Ex.17 was drawn and from Shri Topiwala, a cheque register and cheque book were seized by the police in their presence. He stated that whatever articles were seized from the appellant were written down in the seizure memo and that seizure memo was given to the appellant and the appellant had signed copy of the said seizure memo.

In his examination-in-cross, in para-24 he stated that he and Shri Bhavsar both were working in the same office. He stated that since they were Field Officer, they had no definite place in the office to sit. He admitted that on account of his work, ordinarily he was required to remain out of the office for most of the time and they were required to give report of their work. He denied that it was necessary that first they were required to resume in the office at 11.00 a.m and, thereafter, to go out of the office. In para-25, he stated that he was called by peon and was informed that his superior

officer summoning him and, thereafter, he and Shri Bhavsar both went to the chamber of his superior,who instructed them to see Shri Khoda. They did not ask the reason for seeing Shri Khoda. They went on scooter at the office of ACB. In para-26, he stated that they straightway went to the chamber of Shri Khoda and informed that they were sent by Electrical Inspector Shri Vinay Petiwala. On hearing this, Shri Khoda read over the complaint and they were sounded about their work to be performed as panchas in the said trap. They had signed the complaint. A xerox copy of the authority letter was attached with the complaint, which was signed. He stated that first he signed FIR and, thereafter, the authority letter by his own ball pen. He stated that since the authority letter was on xerox, the signature made in FIR and the authority letter difference was seen. In para-27, he stated that Shri Khoda, ACB Inspector had given instruction about delivery of muddamal notes and for signal. He had not given any instruction as to authority letter. He did not look back and, therefore, he

could not say that whether raiding party members were following him and at what distance. He stated that according to him, the complainant asked from the appellant about the cheque. He admitted that in his police statement, he had not stated that complainant stated to the appellant to give the refund of Rs.500/- of his uncle. He also admitted that in his police statement that he did not state that the complainant stated that he had brought Rs.25/-. In para-28, he stated that during the conversation between the complainant and the appellant, the appellant did not ask about why he [panch No.1] had accompanied the complainant. The appellant did not ask this to the complainant or to him also. In para-29, a witness stated that according to him, the appellant went to the chamber of Shri Topiwala with articles No.6, 7 and 17 cheque book. He stated that according to him, below cheque book, there was article No.7 and there was article No.6 below that and in that position, the appellant took the papers. He stated that when the appellant returned from the chamber of Shri

Topiwala, whether he had any of these three papers in his hands, he could not say. He further stated that when the appellant went to the chamber of the Estate Manager, he had a cheque book in his hands and he brought the said cheque book back. That cheque book was of article No.17. During raid, when police came, whether register article No.16 was on the table or not. He could not say. He admitted that the panchnama Ex.16 was 4.30 p.m and panchnama Ex.17 was executed between 7.00 p.m to 8.00 p.m. He stated that during panchnama Ex.16, Shri Khoda was inquiring from the appellant. In para-30, he stated that in the room where the incident took place, except appellant other employees were also working. During panchnama was drawn, the other employees were busy with their own work. The panchnama was prepared in the office of the appellant. He could not say with certainty at which table the panchnama was written. During the panchnama, he, panch No.2 – Shri Bhavsar, Shri Khoda and his writer were together. In para-31, he stated that he could not say whether after inquiring from the

appellant, Shri Khoda summoned for Shri Topiwala. He could not remember whether any inquiry was made from Shri Topiwala. He could not remember whether some other record and other papers were lying on the table of the appellant. He could not remember as to whether the table of the appellant was examined in the light of ultra violet lamp. He had not seen whether the table of the appellant had drawers. While seizing the cheque book of article No.17, Shri Khoda did not inquire anything from him nor he inquire about article No.16. The appellant was made to sit on his chair and a chair and table were adjacent. After raiding party reached, the appellant was allowed to stand. In para-32, he stated that he felt that the description of the shirt in Ex.16 was correctly written. No differential marks were made where the powder marks were noticed on the shirt article No.4. No such marks were made inside the pocket of the shirt. No such differential marks were made on cheque article No.9 where anthracene powder was seen. He could not say whether Ex.7 application was examined in

ultra violet lamp. The accused did not instruct the complainant that the complainant should write an application for issuance of new cheque. The complainant also did not say to the appellant that the appellant should write the said application. According to him, the appellant did not ask anything from the complainant before writing application Ex.7. Before writing application Ex.7, whether appellant had called for any papers or not, he could not say. The witness stated that it did not happen that before writing an application Ex.7, the appellant asked the address of the uncle of the complainant from the complainant. While, the said application was being written, the complainant was standing on right side of the table of the appellant and he was standing on right side of the complainant. He stated that to sign such application, the complainant utilized the pen of the appellant and he and complainant did not ask for his pen. After verifying from the cheque book, the numbers were written by the appellant in Ex.7 application. He could not say which pen was used when the

complainant second time signed. He could not say, whether complainant used ball pen article No.3, when he signed the said application. He stated that the ball pen which was seized from the accused was the ball pen which was produced at article No.13. He admitted that in panchnama, no notes were made in respect of where the powder marks on article No.13 ball pen were seen. In para-33, he stated that after he and complainant met with the appellant, the appellant twice had risen from his table. At both these time, none had approached the table of the appellant inquiring about the appellant, except that when they were present with the appellant, none had approached the appellant in their presence. He further stated that it might have happened that while appellant went to the office of Estate Manager, he also took register along with the cheque book. It did not happen that while writing application Ex.7, the complainant volunteered new address of his uncle and provided the same to the appellant. He further stated that how many folds were given to the currency notes before the same

was put in the pocket of the complainant by the constable that he could not say. He cannot say that notes were in what position, when the complainant took out these currency notes from his pocket. In para-34, he stated that so far as he prepared wherever amendment made in the panchnama their initial were taken. He could not say whether Shri Khoda had initiated such amendment in the panchnama, but he had signed it. He stated that it did not happen that something was to be added in the panchnama, which was added by small writing in Ex.16 panchnama. He denied the suggestion that the sentence “the xerox copy of the authority has produced by the complainant has been signed” was added in third part of panchnama Ex.16. He stated that the initial made in respect of this sentence was made by second panch Shri Bhavsar. The initials were obtained because afterwards, it might not create any doubt. He denied the suggestion that the said sentence was added afterwards in the panchnama. In para-35, he stated that the initials made at page No.2 of Ex.16 panchnama were made by him. In

para-36, he stated that the amount which were recovered from the pant of the appellant was counted by him, the articles which were found from the pant pocket of the appellant were examined in the light of ultra violet lamp, he could not say. The original authority letter Ex.10, which was seized was seen in ultra violet lamp, he could not say. He admitted that if no reference was made in panchnama Ex.16, it means that the said authority letter was not examined in light of ultra violet lamp. He admitted that the cheque book article No.17 was not examined in the light of ultra violet lamp. He also admitted that application Ex.7 was also not examined in ultra violet lamp. In para-37, he stated that he could not remember that whether they had gone to the chamber of Shri Topiwala to prepare panchnama Ex.17. He stated that he could not say that whether receipt at Ex.18 was given to Shri Topiwala in his chamber or in the room where the incident took place. In para-38, he stated that during the period, he and complainant approached the appellant and raid was carried out, the

complainant did not attempt to give authority letter to the appellant. In para-39, he stated that ball pen Ex.13 was placed straight or slanting in the pocket of the appellant, he could not say. He could not say that when muddamal articles No.1, 2 and 3 notes were extracted from the pocket of the appellant were scattered or gathered. In para-40, he admitted that his elder brother was working as security officer in Corporation at Surat. He admitted that his father was in police department of the State and retired as Group Commander, SRP from Ukai. He denied the suggestion that on account of his father, who was working in police department, he knew previously ACB Inspector Shri Khoda. He denied the suggestion that on account of pre-acquaintance, Shri Khoda selected him as panch and assigned him the work of panch No.1. He stated that his father did job for about 30 years. He stated that he had seen Arpan Apartment situated at Nanpura. In para-41, he denied the suggestion that cheque Ex.9 was given to the complainant by Shri Topiwala in his chamber. He denied the suggestion

that the appellant did not demand any bribe from the complainant. He denied the suggestion that the complainant had not given any amount to the appellant and that appellant had not accepted the same. He denied the suggestion that the muddamal article currency notes No.1, 2 and 3 were found from the appellant. In para-42, he stated that he could not say if he was declared hostile witness and being Government servant, he would face difficulties in the job. He denied the suggestion that on account of saving his job, he supported the prosecution case. He denied the suggestion that on account of pressure by the police, he was stating against the appellant. He denied the suggestion that panchnama Ex.16 was prepared afterwards in the ACB Office. He denied the suggestion that his all signatures were obtained afterwards. This is all the evidence of panch No.1.

Date: 10.10.2006

[**9**] P.W.3 – Shri Arvindbhai Pranshanker

Vaidya, uncle of the complainant whose refund was to be obtained, examined at Ex.19. He stated that in 1979, he had applied to the Housing Board for allotment of a flat from Bilimora. He had deposited Rs.500/- in Bank of India at Bilimora. He produced the registration number and the receipt of the amount deposited vide Ex.11 and 12. He stated that in draw which was conducted by the Housing Board, a flat could not be alloted to him. He had received a letter from Housing Board to obtain refund of the deposit at the address of Bilimora. In 1981-82, he shifted at Navsari. The said letter at Ex.8 for obtaining refund was lost by him and, therefore, he could not obtain refund. In January, 1988, his nephew Shri Shaileshkumar came to Navsari to reside with him. He was serving at Surat and was commuting. During that period, Ex.8, 11 and 12 papers were found by him and he entrusted the work of obtaining refund to his nephew Shri Shaileshkumar and he also entrusted the papers to him. The witness stated that Shri Shaileshkumar had been to the office of Housing Board at Surat on 27th

January, 1988. He obtained the information that he should contact again after a week as the case was old. He had entrusted the papers to a clerk whose name was Shri Patel. On 5th February, 1988, Shri Shaileshkumar again visited the office of the Housing Board and he was told to come after three days and, therefore, he visited the said office on 8th February, 1988. The witness stated that Shri Shaileshkumar talked to him on that night. The witness stated that Shri Shaileshkumar told him that bribe was demanded and about Rs.25/- was demanded. The witness stated that he instructed Shri Shaileshkumar that no such bribe should be given legally and if that was necessary the person demanding bribe should be trapped through ACB. He also instructed Shri Shaileshkumar to inform ACB department. During this conversation, he had delivered one authority letter to Shri Shaileshkumar, it was written on one page of notebook and he had signed the said authority letter, which he identified at Ex.10. He also first identified the advance stamp receipt placed at Ex.13. The witness further

stated that on 9th February, 1988, Shri Shaileshkumar informed him that a complaint was given against Shri Patel at ACB office and Shri Patel was arrested.

In his examination-in-cross, in para-7, he stated that it was true that police recorded his statement on 26th February, 1988. Shri Shaileshkumar was not present when the police recorded his statement. He admitted that he did not inform anybody about the change of his address. He also admitted that the letter Ex.8 was addressed to his Bilimora residence and the said letter was given to him by somebody from his residence. He stated that when the said letter was received by him, the receipt Ex.11 was misplaced by him, but he had registration number. He stated that while adjusting his luggage, he found all the papers. He stated that he could not say when all the papers were lost. He stated that he did not inform Housing Board about the fact that the papers were lost by him. He did not inquire as to whether refund could be obtained

even without papers by submitting indemnity bonds. He had not attended the evidence of the accused. He stated that the amount of refund was not received by him till date. In para-8, he admitted that a blank form of advance receipt was attached with letter Ex.8. He stated that he could not say whether this receipt was given to his nephew Shri Shaileshkumar. In para-9, he admitted that after entrusting the work of obtaining refund to Shri Shaileshkumar, he was inquiring about this from Shri Shaileshkumar. He admitted that from the conversation with Shri Shaileshkumar, he felt that the person working in the office of the board was unnecessary making Shri Shaileshkumar visiting the office frequently. He admitted that for this reason, he had decided to get him arrested in ACB trap. He stated that about the refund, he had conversation with his nephew for about 5 to 7 times. He admitted that Shri Shaileshkumar told him that Shri Patel was not properly behaving and was not giving proper replies. He stated that Shri Shaileshkumar also informed that Shri

Shaileshkumar was going to the office of the housing board in his recess time, but Shri Patel was showing excuses. He denied that his nephew informed him that Shri Patel wanted money and if money were offered, Shri Patel would accept it. He admitted that he could not remember whether the arrangement of trap was thought before the authority letter Ex.10 or thereafter. He denied the suggestion that because the accused was frequently calling Shri Shaileshkumar in his office, due to that vengeance, this false case was filed. He admitted that he did not give any amount of Rs.25/- to Shri Shaileshkumar. This is all the evidence of P.W.3.

[**10**] P.W.4 Ahmmad Mohammad Khoda, Inspector ACB, Surat is examined at Ex.20. He stated that on 9th February, 1988, he was working as PI, ACB, Surat. On that day, complainant Shri Shaileshkumar Thakorlal Vaidya visited him in the office at 10.15 a.m., he was present. He stated that Shri Shaileshkumar declared the facts of his complaint and was prepared to give written

complaint. Therefore, he recorded a complaint as dictated by the complainant. The complaint was read over to the complainant and he confirmed the same to be correct. The complainant as well as he himself signed below the complaint which he produced at Ex.21. He stated that thereafter, complainant presented xerox copy of the authority letter, which was given to him by his uncle. The witness stated that he attached the said xerox copy with the complaint. He identified the same before the Court. The witness stated that thereafter, a written yadi was sent to the office of Electrical Inspector through peon and he arranged two employees of that office to act as panchas. At about 11.40 Shri Shardulsinh Dhokalsinh Champavat and other Shri Bhagwandas Harkishandas Bhavsar of the said office reached at ACB office in presence of the complainant. He introduced the complainant to panchas and panchas to complainant. The complainant narrated brief facts of the complaint and panchas read complaint at Ex.21. Panchas signed on complaint at Ex.21 and authority letter. Thereafter,

complainant presented the amount of Rs.25/- to be given in trap and an amount of Rs.25/- were in three notes, two of denomination of Rs.10/- each and one note of Rs.5/- in denomination. He stated about the experiment carried out by his constable in respect of anthracene powder as well as ultra violet lamp and, thereafter, he stated about the instruction given to the complainant. He stated that the amount of muddamal currency notes was put in the shirt pocket of the complainant. He stated about the first part of the panchnama. Thereafter, according to the witness, they started from ACB Office to reach at the office of the appellant in Government vehicle. The complainant and panch No.1 started going to the office of the appellant, while panch No.2 and remaining staff followed him, all of them reached at 2nd floor through stairs. The complainant and panch No.1 entered in the office room of the appellant and others took their position outside the office. The witness further stated that thereafter, 20 minutes after, complainant gave prearranged signal and, therefore, he, panch No.2

and other members of the raiding party entered in the office room of the appellant and reached near the appellant. He introduced himself to the appellant and the appellant was ordered to remain status-quo. Then he inquired from panch No.1 and from the complainant about the conversation took place between the complainant and the appellant and the details of the incident. He instructed Head Constable to take out ultra violet lamp. In the light of the said lamp, firstly except the appellant and complainant the hands of all were examined, but no marks were found. Thereafter, the hands of the appellant – accused were examined in the lamp and it was found on his right hand fingers and thumb the marks of anthracene powder were seen. The person of the appellant was also examined in the light of ultra violet lamp and it was found that on the brink of the pocket of the left side of the shirt of the appellant and inside the shirt, there were marks of anthracene powder. Panch No.1 was, thereafter, directed by him to search the person of the appellant. He stated that on such search

from the left side pocket of the bushirt of the appellant folded currency notes and one ball pen of blue coloured were found. The numbers of this currency notes were compared with the first part of panchnama and they were tallied. The currency notes and ball pen were examined in the light of ultra violet lamp. The said currency notes and ball pen were seized by him in presence of panchas. The bushirt which the appellant was wearing was also seized which the witness identified before the Court. According to the witness, thereafter the hands of the complainant were examined in ultra violet lamp and it was found that anthracene powder marks were there on right hand of the complainant including the thumb. The person of the complainant was searched by panch No.2, from his pant pocket, the railway pass and some cash was found from his left side pocket, original authority letter was found which was seized by him and he identified the same to be muddamal article No.14 and Ex.10. From the right back pocket of the pant of the complainant, a cheque of Rs.500/- was found. The said cheque

was examined in the light of ultra violet lamp and at both the ends of the cheque the powder marks were seen. The said cheque was seized in presence of panch and the witness identified the said cheque to be muddamal article No.15 and Ex.9. Before searching the complainant, his shirt and body was examined in the ultra violet lamp and in left side shirt pocket of the complainant, anthracene powder marks were found and anthracene powder were also found from the back right hand pant pocket of the complainant. Thereafter, the hands of panch No.1 were examined in ultra violet lamp and his hands were found with the marks of anthracene powder. Thereafter, the accused – appellant was asked to produce all papers relating to the complainant which he produced and seized in presence of panchas. Those papers were identified by the witness to be the papers at articles No.6, 7, 8, 9, 10, 11 and 12. The muddamal article No.5 also was seized, which was at Ex.7. The witness further stated that thereafter, local situation of the place of incident was described in second part of

panchnama and the said panchnama was completed at 4.30 p.m. The signature of panchas were obtained and he also signed the said panchnama as panchnama was drawn in his presence, which he identified to be panchnama produced at Ex.16. The witness further stated that a receipt was prepared for the currency notes seized from the appellant and in original the said receipt was delivered to the appellant and on duplicate in token of receiving the original, the appellant signed, which he identified to be the office copy of the receipt at Ex.15. He recorded the statement of the accused – appellant. The witness further stated that the cheque book and cheque memo register was not produced by the appellant. He investigated and found that the said cheque book and cheque memo of register were with Shri Topiwala. The witness further stated that Shri Topiwala was asked to produce the said cheque memo of register and cheque book and Shri Topiwala produced register muddamal article No.17 which was seized in the presence of panchas vide panchnama Ex.17. A receipt was given to Shri

Topiwala vide Ex.18 and his statement was recorded. The witness stated that thereafter, coming to the ACB office, a crime was registered and a copy of the FIR was sent. The witness stated that on 10th February, 1988, a statement of the complainant and panch No.1 were recorded. On 26th February, 1988, a statement of Shri Arvindbhai Pranshanker Viadya was recorded and investigation was in progress. On 21st April, 1988, concerned authority was requested to accord the sanction to prosecute the appellant. On 26th September, 1988, the sanction was received by him to prosecute the appellant, which he had produced at Ex.22. On 10th October, 1988, the appellant was arrested and was produced before the Court along with the charge-sheet.

In his examination-in-cross, in para-19, he stated that he wrote a yadi to Electrical Inspector after he recorded the complaint. He stated that it was about 11.05 a.m at that time. The peon, who had taken that yadi and panchas did not came together in his office. He stated that

below the complaint, he had placed one paper. He admitted that when he recorded the complaint, he felt that the incident was an offence cognizable. He stated that FIR book was in his office and on that day also it was in his office. He stated that in the book of FIR, the complaint was recorded in the incidents of successful traps and that was their procedure. He stated that after the trap was over, he reached at his office at about 9.30 p.m. While, they started for raid, somebody was left in their office. The xerox of the authority letter attached along the complaint, was produced by him at the request of the defence at Ex.23. He stated that when panchas reached ACB office, Ex.23 was attached with the complaint at Ex.21. He stated that first panchas signed Ex.21 and, thereafter, they signed Ex.23. He stated that the signatures of panchas on Ex.23 are in original. He did not agree with the suggestion that the signatures scribed by the panchas on Ex.21 and 23 were in different ink. In para-20, he stated that he was serving as P.I. ACB, Surat from 21st November, 1985. He stated

that in trap cases occurred before the present case, he had not taken private panchas in a single case. He denied that there was circular that in trap cases, no private panchas were to be taken. He admitted that in all cases in which he arranged the raid, he had selected Government servant as panchas. He stated that except Anti Corruption Bureau, he had also served in other branches of police department. In other branches, in some cases, he had taken panchas from public. He denied the suggestion that in trap cases, he selected government employees as panchas because such panchas were to remain in his control. The witness stated that the government employees were taken as panchas, because one government employee would not do anything wrong against other government employee. He was shown one letter of his office which he admitted. That was, according to the witness, was a report made by him to the Director of Anti Corruption Bureau. He admitted that in said letter, he had recommended some steps to be taken against the panchas. The witness explained the situation before the Court

that the said case was proceeded once in the Court and was dropped on account of sanction being invalid. Thereafter, the fresh sanction was obtained and the said case was proceeded again. He submitted that in the said case, the deposition of the panchas were taken both the times and he recommended to take steps because there was contradiction in the depositions of panch Shri Kamlesh Bharucha, which were recorded on oath. The said report was produced by him at the request of defence at Ex.24. In para-21, the witness stated that he could not say from which place, the complainant indicated pre-arranged signal, he could say where the witness was standing. He stated that the complainant did not come up to stairs. He was talking with panch No.2, but he was not concealing himself. He was standing at the distance of 10 feet from the door of the office. He noticed the complainant coughing from the door of the office at that time. The table of the appellant was not visible from the place where he was standing. In para-22, he stated that he did not ask the complainant

that had he thrown something before he indicated the per-arrange signal. He stated that it did not happen that on the day of the incident, he inquired from one Smt. Avantikaben, who was the employee of the Housing Board. He stated that during his investigation, it was not found that the complainant had thrown forms of the scheme of the board. He admitted that he recorded the statement of Estate Manager Shri Shah on 24th February, 1988. He stated that Shri Shah produced xerox copy of the muster in his statement. He admitted that in the said muster, there was a reference that Estate Manager was not present in the office on 4th February, 1988 and 5th February, 1988. In para-23, the witness stated that after obtaining information from panch, he did not notice the table of the appellant carefully. After the experiment of ultra violet lamp according to his direction, the appellant submitted certain muddamal articles. During that period, the occasion had not arisen to pick out the documents lying on the table of the appellant. He could not say whether there were

drawers in the table of the appellant. He submitted that during the period, he was in the office, he was not informed that one audit party had been to the office from Ahmedabad. He submitted that the appellant presented the documents from his table. After the appellant presented the documents, there were no other papers on his table. He stated that the appellant produced those papers at about 4.00 p.m. It did not happen that he examined those papers at that time. He stated that at that time, it did not occur to him that the cheque book from which the cheque was delivered to the complainant, was not in the papers submitted by the appellant. He came to know about this only when he recorded the statement of the appellant. He admitted that on the day of the incident, he recorded the statement of two persons, appellant and Shri Topiwala. He stated that complainant and panchas were in the office of the appellant, when he recorded the statement of Shri Topiwala. The complainant was present till the completion of the panchnama of Ex.17. He submitted that

thereafter, he did not feel need of inquiring anything from the complainant and panch No.1. He recorded the statements of panch No.1 and complainant on the next day and at that time, he did not feel the need of asking any explanation as to cheque book. He did not feel the need of examining articles No.16 and 17 in light of ultra violet lamp when those muddamal articles were seized. He stated that the last page of muddamal article No.16 was in the same position, when it was seized and the writing was also the same. In para-24, he stated that page No.36 of muddamal article No.36 cheque book were signed by both panchas and by him. He and both panchas also signed at Sr.No.33 of muddamal article register No.17. He admitted that on account of these documents, the cheque of the uncle of the complainant was re-validated on 5th February, 1988. He admitted that on cheque book, the signatures of Estate Manager as well as Divisional Accountant were necessary. In para-25, the witness stated that he inquired about the refund procedure from the Estate Manager and from

Shri Topiwala. He stated that he came to know at the time of seizure of article No.17 cheque book that the next cheque of the cheque book which was given to the complainant, was issued to one Shri Mehta and was cancelled. He stated that he did not inquire anything from Shri Topiwala about Shri Mehta nor he inquired from the appellant. He denied the suggestion that at that time on behalf of Shri N.V.Mehta, one Shri R.B.Mehta had come to take the cheque and who was present. He stated that he did not know that on the same day a new cheque was issued to Shri Mehta by Housing Board. He stated that he did not record the statement of Shri R.B.Mehta. In para-26, the witness stated that he did not obtain any signature of panchas on article No.4. He admitted that he did not demarcate the place at which the anthracene powder marks were seen on the part of the shirt pocket. He denied the suggestion that the description of the bushirt was given in Ex.16 panchnama, did not pertain to muddamal article No.4. In para-27, the witness stated that he came to know on second day from the statements of the

complainant and panch that who utilized ball pen article No.13 and from how many times the same was used. He admitted that ball pen article No.13 was produced on 10th October, 1988 along with the charge-sheet. He denied the suggestion that the said ball pen was not produced on 10th October, 1988. He stated that it did not come to his notice that at the time of raid one Shri Dajibhai Hirabhai was present in the office. It was not noticed by him that on that day, the appellant had allotted a house to said Shri Dajibhai Hirabhai. In para-28, he stated that it did not happen that on left hand of the complainant anthracene powder marks were seen. He submitted that he did not feel any need to execute ultra violet lamp experiment on application Ex.7, after knowing the details of the incident. He also admitted that he did not feel any need to execute the experiment of ultra violet lamp on the documents submitted by the appellant. In para-29, he stated that in the room where this incident took place, there were other tables of other employees nearby the table of the appellant and

other members of staff were working. He admitted that on that day, in all there were 31 employees on duty and out of that he recorded the statements of 18 witnesses. In para-30, he denied the suggestion that the father of panch No.1 and he himself were in police force and, therefore, he knew him. He admitted that the complainant was working as laboratory assistant in “Mantra”. He admitted that after knowing the nature and occupation of the complainant, he followed the routine procedure in the said trap. This is all is the evidence of P.W.4.

[**11**] Learned advocate Mr.Hriday Buch on behalf of the appellant submitted that there are two views possible on appreciation of evidence and that view favourable to the accused be adopted. The two views as contended by learned advocate for the appellant were highlighted by him with reference to the evidence of witnesses and the explanation offered by the accused. It is submitted that firstly, prosecution must prove the demand beyond reasonable doubt. It is

submitted that it must be noted that between the complainant and appellant, three meetings took place out of these three meetings, as admitted by the complaint, at two meetings no demands were made by the appellant. This is the circumstance doubting the case of the complainant in respect of demand made by the appellant from the complainant. In this respect, attention of this Court was drawn to the deposition of the complainant wherein in para-6, he stated that the appellant stated that the case was very old and if the complainant paid Rs.25/-, refund would be available. In this respect, attention of this Court was drawn to para-39 of the deposition of the complainant wherein the complainant admitted that on 8th February, 1988, he did not state before the police that the appellant told that the case was very old and refund was not possible. The statement of the complainant as to his request to the appellant to issue refund without any amount, is also first time before the Court. The statement of the complainant as to reply of the accused that his work would not be

done if the amount was not given, is also a new case at the instance of the complainant and these are proved contradictions casting doubt upon the say of the complainant that he did visit the appellant on 8th February, 1988 and the appellant demanded bribe. In these circumstances, the second view as submitted by the defence that the complainant never came to the office of the appellant on 8th February, 1988 is the second possible view. With further defence that everything was ready on 5th February, 1988, but want of authority letter and want of signature of Divisional Accountant and Estate Manager, the complainant was requested to come on next day i.e. on 6th February, 1988 appears to be probable. It is further contended that though the complainant, in his deposition, stated that the appellant demanded Rs.25/-, but this statement also is not free from doubt and this is evident from the evidence of P.W.3 – Shri Arvindbhai Pranshanker Vaidya wherein he states in para-9 of his deposition that no amount was ascertain by the complainant and P.W.3 – Shri Arvindbhai

Pranshanker Vaidya to be given in bribe. In para-9, P.W.3 – Shri Arvindbhai Pranshanker Vaidya states in clear term that the complainant told him that the appellant might demand Rs.25/-. It is submitted that this is the situation, after the demand was made by the appellant before the complainant and according to the complainant, the appellant demanded Rs.25/-. It is submitted that the say of the complainant as to demand of Rs.25/- on 8th February, 1988 is improbable from the evidence of P.W.3 – Shri Arvindbhai Pranshanker Vaidya, which is clear that at that juncture, there is no certain conversation between the uncle and nephew Shri Shaileshkumar, that the appellant had demanded Rs.25/- and, therefore, the case of demand of the complainant becomes doubtful and in those circumstances, the defence that on 6th February, 1988 in heat of passion, the appellant scolded the complainant because the complainant had not brought authority letter that the complainant felt that the appellant was not properly behaving and was frequently, forcing complainant to attend the

office of the appellant, is the cause of trap came to be arranged. According to the learned advocate for the appellant, this is a possible second view and probability of the second view of defence is much greater in view of the above evidence of demand. Learned advocate for the appellant substantiates his contention further and draw the attention of this Court the other circumstances which further goes to suggest the probability of the defence case. It is submitted that on 5th February, 1988, even as per the prosecution case, in muddamal articles No.7 and 8, necessary entries were made that the old cheque issued to P.W.3 – Shri Arvindbhai Pranshanker Vaidya was cancelled and the cheque was revalidated. There was no cause for appellant to demand any amount by way of bribe thereafter. The muddamal article No.8 is the cheque book which contained old cheque issued to P.W.3 – Shri Arvindbhai Pranshanker Vaidya and muddamal article No.7 is memo of cheque register. Both these are signed by Divisional Accountant as well as Estate Manager on 5th February, 1988. According

to learned advocate for the appellant, these are the documentary evidence which strengthens the case of the defence. This situation has not been discussed by the trial Court. It is submitted that not only that but there are inconsistencies in the deposition of the witnesses of prosecution in respect of the manner in which incident occurred. The complainant, in para-41 of his deposition, stated his ignorance about the situation of the office of the appellant and in specific terms, he stated that the accused – appellant knew that the complainant was coming to him for the refund of his uncle. Even then in para-17, the complainant states in this respect that as soon as he approached the appellant, he demanded refund and the appellant stated that whether the complainant had brought the amount of his labour and he replied in affirmative. When version of panch No.1 is examined with this reference in contradiction in para-9, panch No.1 states that as soon as they approached the appellant, the complainant demanded the cheque of Rs.500/- and the appellant stated to the

complainant that whether he had brought the amount of Rs.25/- of his labour and the complainant replied that he had brought Rs.25/-. Both these versions materially differs not only that, but in para-27 of his deposition, panch No.1 admitted that in his police statement, he did not say that the complainant said that he demanded the cheque of refund as well as he never stated before the police that the complainant replied that he had brought Rs.25/-. Therefore, this contradiction goes to the root of the prosecution case and manner in which the incident has occurred becomes gravely doubtful. There are other circumstances also which creates doubt in the version of the witness. The version of the complainant as well as panch No.1 in respect of what transpired on 9th February, 1988 in the office of the appellant appears unnatural by bear reading and, therefore, the evidence of acceptance of the bribe by the appellant as well as delivery of cheque by the appellant to the complainant becomes doubtful. It is admitted that there were almost 31 employees working in the

office of the appellant when raid was carried out, not only that but Investigating Officer recorded the statements of 28 employees out of 31, but none of them examined and it is clear by the deposition of the Investigating Officer of para-29. Even Shri Topiwala and Shri Shah, who was Estate Manager, were the material witnesses and whose statements were recorded, are not examined by the prosecution to prove its case and, therefore, the position remains that there is no independent witness examined by the prosecution and material two witnesses i.e. complainant and panch No.1, who are examined by the prosecution deferrers in their version on material aspect of the case i.e. demand and acceptance as afore stated. This aspect has not been considered by the trial Court. It is submitted that very important feature of the prosecution case is right from recording of FIR till filing of the charge-sheet, all the procedure was performed by only one officer Shri Khoda, P.I., ACB. He being interested witness in success of the trap, his evidence becomes tainted

and in such circumstances, his evidence must not be considered above board. Very vital feature of the case, according to the learned advocate for the appellant, is the recovery of muddamal articles No.16 and 17 from Shri Topiwala and that too, after the raid and at 19.00 hours through panchnama Ex.17. It is contended vehemently that article No.17 is the cheque book from which new cheque which is muddamal article i.e. Ex.9 was issued. It is contended that if the prosecution case is, Ex.9 cheque came to be issued from muddamal article No.17 cheque book by the appellant then how the said cheque book came to be recovered after the raid from Shri Topiwala. This is not only throws doubt on the prosecution case of acceptance of bribe, but this circumstance strengthens the defence of the accused that in fact, he never delivered and issued any cheque to the complainant, but Ex.9 cheque was issued and delivered by Shri Topiwala to the complainant. The case of the prosecution from this circumstance falls to the ground that the cheque was issued by the accused and before

that he accepted the amount of Rs.25/-. It is admitted fact that the handwriting in cheque Ex.9 are of Shri Topiwala. The witnesses and the investigating officer himself admitted that when by panchnama Ex.16, muddamal articles were seized by investigating officer from the appellant, this cheque book was not at the table of the accused – appellant and in this respect, the explanation offered by the defence becomes more probable and that is second view of the incident that how the incident might have occurred. It is contended that the authority letter, which is placed at Ex.10, was vital document. The authority letter remained with the complainant only and was recovered from him suggesting that the explanation of the appellant that when the authority letter was demanded by him. The complainant stated that the same was lying in the scooter and he would bring it and in the pretext to bring the said authority letter, he gave signal to ACB party. So the recovery of authority letter, thus, from the complainant and recovery of muddamal articles No.16 and 17 from Shri

Topiwala suggested only thing that the cheque was delivered to the complainant by Shri Topiwala and when the appellant asked for the authority letter on pretext of bringing the same, a raid was carried out. Therefore, the evidence of acceptance should not be believed in view of these circumstances appearing from the evidence of prosecution itself. It is, according to the learned advocate, not merely irregularity but goes to the root of the prosecution case which renders the credibility of the witness doubtful. It is contended that moreover, the case rests only on the oral evidence of the witnesses and the credibility of such oral evidence of the witnesses is doubtful. It is submitted that this is so because no demarcating lines were drawn on any of the muddamal articles including bushirt of the appellant from where the anthracene powder marks were alleged to have been seen in ultra violet lamp. In this respect, the court remains in dark as to in fact whether the anthracene powder marks were found on which articles. The position emerges that the Court has to rely upon

the oral evidence of the witnesses only and no scientific evidence is available in absence of firstly failing to demarcate the anthracene powder on muddamal articles and secondly for not utilizing phenolphthalein powder as directed by the Supreme Court and this Court. It is submitted that mere recovery of the amount from the appellant – accused would not expose him to criminal liability, but the demand and acceptance will have to be proved in each case by the prosecution beyond reasonable doubt. It is submitted that the accused – appellant was entrusted with various duties including selling of forms for housing board scheme. Each form costing Rs.5/- and receipt was given for that. In defence, the suggestion is put to this respect that the complainant threw out certain papers before making signal meaning thereby that in the pretext of purchasing forms, he might have paid some amount to the appellant which might have recovered from him and, therefore, mere recovery, according to the learned advocate for the appellant, of the amount from the accused would

not invite criminal liability of demanding bribe by the appellant – accused. The circumstance which is very vital must not loose sight of. The complainant had to visit the appellant three times. Undoubtedly, the case was very old of 1984. It is proved from the record that no delay was caused on the part of the accused – appellant that is apparent from the evidence of Investigating Officer and is admitted by the prosecution that on 4th February, 1988 and 5th February, 1988 on both days, Estate Manager of the Housing Board was out of station and resumed the office on 5th February, 1988. It is proved and established by muddamal articles No.6 and 7 that as soon as Estate Manager resumed the office, the appellant obtained signatures of Divisional Accountant as well as Estate Manager for cancellation of the old cheque for the refund and re-validating the same for issuance of new cheque. Learned advocate for the appellant submitted that what was required then was submission of authority letter by the complainant to the appellant. In these circumstances, the

explanation offered by the appellant that on 5th February, 1988 in earlier part of the day, the appellant advised the complainant to come in the evening with authority letter and had he visited the office in the evening with authority letter, the complainant would have obtained the cheque for refund instead of that he did not come in the evening and came on 6th February, 1988 without authority letter for which there was a hot exchange between the complainant and appellant. On account of ill-health of the daughter of the appellant and appellant was in mental depression. This gave the impression to the complainant that he was pushed by the appellant to and fro for obtaining refund which ultimately end in raid. This explanation of the accused-appellant is natural, normal and in all respect probable. Learned advocate for the appellant relied upon the decisions, which are as under:-

(1) In the matter of **Khilli Ram Vs. State of Rajasthan** as reported in **1985 SCC (Cri) 24**, paras-3, 6, 9, 12 and 13 are relied upon by the

learned advocate for the appellant. It is submitted that as directed by the Apex Court in paras 12 and 13 of the said decision that phenolphthalein powder treatment to currency notes used for the trap should have been resorted to. In such type of cases, in absence of which the passing of the bribe would be very difficult to be proved.

Learned advocate for the appellant relying upon the observation of the Apex Court, submitted that firstly from the local situation of the office, it would not be probable that the appellant has accepted the bribe and in that case phenolphthalein powder is not used and oral evidence is found short to bring home the guilt to the extent that in this case, even the anthracene powder marks are not demarcated for appreciation of the Court. It is submitted that the facts of that case of *Khilli Ram Vs. State of Rajasthan (Supra)* more or less similar to the present facts of the case. The testimony of trap, witness in this case is also not corroborating

and unreliable and in the said case, the defence was found probablly.

(2) In the matter of **Nathalal Govindji Vaghela Vs. State of Gujarat** as reported in **1979 GLR (2) 190.** This decision is relied upon by the learned advocate for the appellant wherein the Division Bench of this Court deprecated the use of anthracene powder in detection of crime under the Prevention of Corruption Act wherein this Court observed that scientific method of testing and analysis should be observed and it was recommended in such case phenolphthalein powder should be used.

(3) In the matter of **Bharatkumar Jaimanishanker Mehta** as reported in **1982 (2) GLH 249**, the learned advocate for the appellant relied upon the decision of the Division Bench of this Court to substantiate his contention that the prosecution evidence alone cannot be considered for the purpose of coming to the conclusion as to whether the accused accepted the

amount or not. The evidence led by the prosecution, the suggestion made by the defence in cross-examination of the prosecution witnesses, the version was given by the defence and the defence witness if any examined at the trial, everything is required to be considered in its totality and it is to be seen as to whether the total effected of the entire evidence led to only conclusion that the accused accepted the amount. It is submitted that in this case, the suggestions were made that the accused was selling forms for the scheme of the Housing Board and the cost of each form is Rs.5/-. The suggestions were made not only to the complainant, but the Investigating Officer also that the complainant threw some papers before giving signal. It is submitted that these all considered along with the explanation of the accused in totality. The probability of the defence of the accused is much greater and is entitled to the benefit of doubt.

(4) In the matter of **Ganga Kumar Srivastava**

Vs. State of Bihar, as reported in **(2005) 6 SCC 211**. It was submitted that in the said case, on facts cause for the bribe was held doubtful and on defence plea, it was found that the accused was falsely implicated, who had initiated a criminal case against the complainant for theft of electricity. In the said case, though the electric supply was given to the complainant on 22.06.1985 and there was no, therefore, occasion for a demand and acceptance of bribe by the accused – appellant on 25.06.1985 and on 28.06.1985. It is submitted that the Apex Court reiterated observation that the currency notes in question used in trap were without treating the same with phenolphthalein powder and conviction was set aside. It was submitted that the facts of the above case again are more or less similar to the facts of the present case as here also on 5th February, 1988, the procedure was completed and there was no cause for the appellant to demand and accept the bribe. Moreover, phenolphthalein powder was not used and anthracene powder was used and that too in a

manner that the powder marks were not properly demarcated and the case rest on oral evidence only.

(5) In the matter of **Subash Parbat Sonvane Vs. State of Gujarat**, as reported in **2002 Cri. L.J. 2787**. The learned advocate for the appellant then relied upon this decision to substantiate his contention that mere acceptance of money is not sufficient for convicting the accused under Section 13(1)(d) of the 1988 Act. It is submitted that there must be evidence on record that the accused obtained any amount by corrupt or illegal means. It is submitted that in this case also mere recovery of the amount if at all is allegedly proved, there is no evidence cogent to denote that the accused demanded the amount by way of illegal gratification and mere recovery or acceptance is not sufficient as per this decision of the Apex Court to convict the accused for obtaining illegal gratification.

(6) In the matter of **T. Subramanian Vs. State**

of T.N., as reported in **(2006) 1 SCC 401.** Learned advocate for the appellant relied upon this decision for the observation of the Apex Court that when two views reasonably possible for the same evidence, the prosecution cannot be said to have proved its case beyond reasonable doubt. In the above case, the accused admitted the receipt of money, but his explanation was, he accepted the money understanding that the same was lease rent and the said explanation was found reasonable and probable and that was the second view from the same evidence. Learned advocate for the appellant, therefore, submitted that in this case also there are two views, one the prosecution evidence and other reasonable explanation of the accused from the same evidence, which is probable. It is submitted that there was no cause for the appellant accused to demand the bribe, the matter was delayed only on account of want of authority letter, which was not brought by the complainant either on 5th February, 1988 or on 6th February, 1988. It is probable that the complainant never visited the

appellant on 8th February, 1988 and directly approached on 9th February, 1988. The evidence of P.W.3 – Shri Arvindbhai Pranshanker Vaidya makes it clear that the complainant as well as Shri Arvindbhai Pranshanker Vaidya both were under impression that the appellant was pushing the complainant to visit his office frequently and on that impression a false case came to be filed where the evidence of demand and acceptance is found doubtful.

[**12**] On above contentions, it was submitted that the accused-appellant is entitled to reasonable benefit of doubt on account of two views possible. It was submitted that certain vital features of the case were not taken into consideration by the trial Court and at all those features had been taken into consideration by the trial Court, the accused would have been acquitted. It was submitted that the appeal is required to be allowed.

[**13**] Alternatively, in the aforesaid peculiar

circumstances of the case, it was submitted that if appeal is not allowed on merits, the case of the appellant for reduction of sentence be sympathetically considered as the appellant-accused is passing through difficult circumstances and his family circumstances are dire. He has lost all the benefits of the job and the incident occurred long back before 20 years. Learned advocate for the appellant relied upon certain decisions to substantiate his contention.

Date: 11.10.2006

[**14**] As against that the learned APP Mr.S.S.Patel supporting the decision impugned in this appeal draw the attention of this Court on observations made by the trial Court in the judgment impugned. It is submitted that in nowhere, it could be said that the learned trial Judge, either erred in appreciation of evidence or placing weighted upon the credibility of the witnesses. The attention of this Court was drawn to paras 35, 36, 48, 49, 51, 53, 60, 64 to 67,

and 71 of the judgment impugned and it is submitted that the learned Judge met with all the submissions raised before him and raised in this appeal. It is submitted that what is necessary is to establish the chain of circumstances of the prosecution case and that chain has been established by the prosecution. It is submitted that for the evidence of demand in paras 18 and 19 of the depositions of the complainant, in no uncertain terms, he stated that on 9th February, 1988, he reached in the office of the appellant and approached him and asked about the refund. Thereupon, the appellant replied that whether the complainant had brought amount of Rs.25/-, which were decided earlier. The complainant replied in the affirmative and, therefore, the appellant thereupon took signatures of the Divisional Accountant as well as the Estate Manager on the new cheque and came to his table, again asked for the amount accepted the same and delivered the cheque. About the demand made by the appellant on 8th February, 1988, the complainant has stated in his deposition, which is corroborated by his

uncle Shri Arvindbhai Pranshanker Vaidya in his deposition. It is submitted that there may be variation in expression, while deposing by the witness, but words “here and there” would not make difference and what is found without any doubt from the evidence of this witness is that on 8th February, 1988 as well as on 9th February, 1988, the appellant demanded the amount of bribe from the complainant. The version of the complainant is amply corroborated by panch No.1 in his deposition in paras 11 and 12. It may be that the panch might not have stated in the same exact word before the police, but the essence of the deposition of the panch is that the appellant demanded the amount of bribery from the complainant on the pretext of his labour done for issuance of refund. It is, therefore, submitted that the contradictions, which are highlighted by the learned advocate for the appellant are of no consequence, when once by worthy evidence of the complainant, uncle of the complainant and panch No.1, it can safely be said that the demand was made by the appellant. It is submitted that this

version is not shaken in cross-examination by the defence. It is submitted that other corroborative evidence of seizure of documents from the appellant wherein even blank advance stamp receipt is also found from the possession of the appellant strengthens the prosecution case. This indicates that the appellant and complainant had previous meeting. It is submitted that original authority letter Ex.10 is found from the person of the complainant and xerox copy of the same was attached with the FIR. Learned APP submitted that this authority letter is dated 8th February, 1988 and was prepared on that day. It is submitted that this fact is corroborated by Shri Arvindbhai Pranshanker Vaidya, P.W.3 in his evidence. Learned APP submitted that therefore, the trial Judge came to the right conclusion that the complainant visited the appellant on 8th February, 1988 and not on 6th February, 1988 and, therefore, the defence of the appellant that the complainant visited him on 6th February, 1988 is not probable at all, but the say of the complainant that he visited the appellant on 8th February, 1988 is not

only corroborated by the oral evidence of Shri Arvindbhai Pranshanker Vaidya, P.W.3, but is also corroborated by authority letter Ex.10, which is written on 8th February, 1988. It is submitted that there is no reason to disbelieve this version of the complainant. It is submitted that the complainant was anxious to get refund. Had the appellant asked the complainant to bring the auathority letter on 6th February, 1988. There was no reason why the complainant would not go to the office of the Housing Board with authority letter. If his uncle could give the authority letter on 8th February, 1988 then he could also give a said authority letter on 6th February, 1988. Learned APP, therefore, submitted that the said defence was not probable at all. It is submitted that the defence of the appellant is, he demanded the authority letter from the complainant, but the complainant said that the same was lying in Luna parked near the building. It is submitted that logically, it is not palatable that without authority letter, the appellant would deliver the cheque to the

complainant. The defence, therefore, is not probable. It is submitted that P.W.3 – Shri Arvindbhai Pranshanker Vaidya after lapse of some time, gives his evidence and only because he has stated that his nephew conveyed him that Shri Patel might ask about Rs.25/- would not render the whole prosecution case doubtful. But the evidence of this witness be appreciated in corroboration of what is stated by the complainant. It is submitted that the incident has occurred and there is no doubt about it. In Ex.25 receipt by which the muddamal is seized from the appellant is signed by the appellant and this receipt is admitted by him. It is submitted that true it is that the cheque book and cheque register Ex.16 and 17 were found and seized from Shri Topiwala by panchnama Ex.17 after the raid. It is submitted that that itself is not fatal to the prosecution case as weighty oral evidence indicates only probability of having delivered the cheque by the appellant to the complainant. The cheque book and register, thereafter, might have been sent to Shri Topiwala and are seized

from him. But this is not the circumstance by which the whole of the prosecution case would become doubtful to the extent that the oral evidence of witnesses would become uncreditworthy. It is submitted that the cheque book or register Ex.16 and 17 might not have been examined in the light of ultra violet lamp. This may be because those muddamal articles were recovered after the raid. Only because the cheque book and register, Ex.16 and 17 were not examined for the anthracene powder marks, it cannot be said that the prosecution case was improbable and defence of accused was probable. It is simply an irregularity on the part of the Investigating Agency and that lapse must not result in advantage of the accused more particularly when the prosecution case is otherwise proved beyond reasonable doubt. It is submitted that nothing turns out from the suggestion made that the appellant was selling Housing Board scheme forms. Those suggestions are denied and from that suggestion, it can not be inferred that the appellant accepted the amount from the

complainant on account of those forms unless something appears in this respect from the prosecution case or something is said by the accused in this respect. Mere suggestion in defence denied by the witness is no evidence at all. It is submitted that panchnama Ex.16, it is amply proved that anthracene powder marks were found in the right hand of the accused as well as in his shirt pocket and on ball pen. This evidence remains established and there is no explanation from the accused in this respect. It is submitted that therefore, the presumption under Section 4(1) of the Prevention of Corruption Act, 1947 arises and that presumption remained unexplained and not dislodged. It is submitted that there is no animosity between the parties particularly between the witness panch No.1 and Investigating Officer that all of them shall frame a false case against the appellant and fabricate the evidence that anthracene powder marks were seen in the hands of the appellant and in his shirt pocket. There is no explanation worth the names so far as this aspect is

concerned. The false application, therefore, is ruled out. It is submitted by the learned APP that demarcating the anthracene powder marks by some identifying means is also a lapse on the part of Investigating Agency, but since when the oral evidence as well as documentary evidence supports the prosecution case, the lapse on the part of Investigating Agency must not come in a way of the prosecution to establish his case beyond reasonable doubt against the appellant. Learned APP, therefore, submitted that there is no merits in the appeal and the appeal deserves to be dismissed. Learned APP also relied upon the certain decisions as follow:

(1) In the matter of **State of W.B. Vs. Kailash Chandra Pandey**, as reported in **(2004) 12 SCC 29**. This decision is relied upon by the learned APP to substantiate his contention that the cosmetic contradiction would not improbablize the prosecution story and when from the chain of the circumstances, the prosecution story stands fully established minor discrepancies and

contradictions are not fatal to the prosecution case.

(2) In the matter of **G.L. Raval Vs. State of Gujarat**, as reported in **(2004) 9 SCC 300**. This decision is relied upon by the learned APP for the contention that when witnesses were found independent, the plea of the accused that he was falsely implicated, cannot be accepted. In the said case, the defence was the accused had been set up and that the two panch witnesses were associates of the complainant's father, but on examining the case and record, it was found that neither the panch witnesses were associates of the father of the complainant nor they work under complainant's father, no partiality was seen on the part of the Investigating Officer. It is submitted by learned APP that in this case, panch No.1 and Investigating Officer are independent witnesses. There is no reason at least not shown on the record why both of them should join hands together to set up a false case against the present appellant. It is submitted that

therefore, the evidence of independent panch witnesses may be relied upon.

(3) In the matter of **State of A.P. Vs. V. Vasudeva Rao**, as reported in **(2004)9 SCC 319**. This decision is relied upon by the learned APP for the statutory presumption arising by virtue of Section 4(1) of the Prevention of Corruption Act, 1947. It is submitted that when the reliable material, the recovery of money from the accused is proved, the presumption arises and it becomes the duty of the accused to dislodge that presumption.

(4) In the matter of **State of U.P. Vs. Zakaullah**, as reported in **(1998)1 SCC 557**. Learned APP relied upon this decision for the independent witnesses. In this decision, the Apex Court has held that the testimony of bribe giver, cannot be rejected merely, because he is aggrieved by the conduct of the accused. Though his evidence requires scrutiny with great care and that the testimony of bribe giver cannot be

rejected outright. Further, the observation of the Supreme Court is relied upon by the learned APP that every citizen is presumed to be independent until to be proved depending on police for any purpose whatsoever. It is submitted that there is nothing on the record to come to the conclusion that panch No.1 acted with interest or that even Investigating Officer had any interest in convicting the accused. Learned APP also relied upon this decision for the observation made by the Apex Court in para-11 in respect of phenolphthalein test wherein the Apex Court observed that the police officer made arrangement to smear phenolphthalein powder on the currency notes in order to satisfy himself that the public servant had, in fact, received that bribe and that currency notes were not just thrust into the pocket of unwilling officer.

[**15**] With reference to the contentions raised and scrutiny of the record, this Court has undertaken a complete and comprehensive appreciation of all vital feature of the case and

the entire evidence on record with reference to the broad and reasonable probability of the case has been scrutinized.

[**16**] Learned advocates for the parties addressed this Court in detail and assisted the Court to greater extent to come to the conclusion and in cases of this type when very rich contentions so far as probability and logical implications are concerned, are made, it becomes the duty of this Court to appreciate and re-appreciate the evidence adduced very carefully and with great care and caution. The cardinal principles of appreciation of evidence, therefore, are required to be kept in mind. It must be borne in mind that the appreciation of evidence is an exercise requires experience and due diligence. Needless to say that the standard of such exercise would be of an exercise by prudent person. But as aforesaid, appreciation of evidence in loose manner may result in wrong conclusions. Therefore, in order to appreciate the evidence on record, especially in criminal

trials,the Court must bear in mind the setup and the circumstances in which crime is committed, the quality of evidence, nature and temperament of the witnesses, the level of understanding and power of perception of individual witness and probability in ordinary course of nature about occurring of the incident as might have been witnessed by the witnesses. The endeavour on the part of the Court must be to find out the truth from the evidence recorded. It must not be forgotten that there cannot be a prosecution case with a cast-iron perfection in all respects and it is obligatory for the Courts to analyse, sift and assess the evidence on record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same, without being obsessed by an air of total suspecion of the case of the prosecution. What is to be insisted upon is not implicit proof. Unless the evidence of a witness is found to be tainted to the extent to undermine the substratum of the

evidence, the deposition on oath may not be discarded merely on account of certain variations or infirmities noticed or pointed out, if the Court is satisfied about the truthfulness of the witnesses in respect of core of the prosecution case. The witnesses are ears and eyes of the justice. There may be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. In the criminal trials, the corroboration of evidence with mathematical niceties can never be expected. It is the process to find out the truth and segregate chaff from grain. The general trend of the evidence must be noticed to arrive at just conclusion and hyper technical approach may be avoided. Above all, so far as the credibility of the witnesses is concerned, it must be borne in mind that celebrated principles followed even today is, the trial Court is the best judge which had an opportunity to notice the demeanour of the witness. Even honest and truthful witnesses may

sometime differ in some details which may be unrelated to the main incident because of powers of observation, retention and reproduction differ with each individual. At the same time, it must be remembered that a parrot like version is disfavoured by the Courts and some discrepancies make a case natural and more improbable.

[**17**] Having gone through the judgment and order impugned in this appeal, no room is found that the trial Court erred in appreciating of evidence and coming to the conclusion. However, as being first Appellate Court as aforesaid, this Court has also undertaken dispassionate scrutiny of the evidence and the same is re-appreciated with reference to the contentions raised.

[**18**] In addition to what has been observed by the trial Judge in the judgment and order impugned in this appeal on re-appreciating the evidence, it appears that no dent could be found so far as the credibility of the complainant Shri Shaileshkumar, P.W.1 is concerned and he is

corroborated by P.W.2 panch No.1 and P.W.3 his uncle Shri Arvindbhai Pranshanker Viadya. In paras-18 and 19 of the evidence of the complainant, it is amply made clear that for obtaining refund, there were 2-3 meetings between the appellant and the complainant and ultimately on 8th February, 1988 demand of Rs.25/- was made by the appellant. This version of the complainant is not shaken in cross-examination and is corroborated by panch No.1 in his evidence. True it is that while assessing the evidence of P.W.3 in his evidence in para-9, he has stated that the complainant and Shri Arvindbhai both felt that the appellant was pushing complainant to come to his office frequently and, therefore, it was decided that a complaint before Anti Corruption Bureau was required to be filed. His evidence cannot be considered in isolation, but with the general tenor of the evidence of this witness wherein he categorically also stated that the appellant had demanded about Rs.25/-, this is a way of expression. In any case, what is stated by P.W.3 in para-9, cannot be considered in that

contradiction of the say of the complainant that the appellant had demanded an amount of Rs.25/-. The same is the case with the deposition of the panch No.1 wherein certain contradictions are brought to the notice of this Court and also have been considered by the trial Court. True it is that what panch No.1 stated in his chief-examination in respect of a demand made by the appellant and that narration verbatim, admittedly, he did not said before the police. Again, it must be remembered that general tenor of the evidence must be scrutinized. There is variation in the statement made by the complainant and panch No.1 before the Court in respect of demand made by the appellant on 9th February, 1988, but inspite of those variations the ring of truth remains in the deposition that on the day, the appellant did demand the amount of Rs.25/-. It must be noted that way of expressing a fact in the different expression is not the contradiction capable of casting doubt on the whole prosecution case. The complainant in his deposition in this respect stated in para-17

that on approaching the appellant, he demanded refund amount wherein the accused – appellant told the complainant that in pursuance of the conversation took place on previous day, whether the complainant had brought the amount for his work done and the complainant replied in affirmative. Panch No.1 in his deposition in para-9 in different expression stated that the complainant asked the appellant to give the cheque of Rs.500/- of his uncle. The appellant replied to the complainant that whether the complainant had brought the amount of Rs.25/- for his labour and the complainant replied in affirmative. In fact, there is no contradiction in this version. True it is that in his cross-examination, this version of panch No.1, could not be shaken. While certain contradictions are brought in the deposition of the complainant in para-39 in respect of the incident took place on 8th February, 1988 and the complainant admitted that whatever he stated before the Court had not stated before the police in the same expression. It does not mean that no conversation had taken

place between the appellant and complainant on 8th February, 1988.

[**19**] In respect of the demand on 8th February, 1988, it must be noted that the matter was as old as 1984. The uncle of the complainant was eager to get the refund of Rs.500/- because the papers which were lost were traced out by the uncle of the complainant. On earlier meetings, the papers including advance stamp receipt were also given to the accused – appellant by the complainant. The documentary evidence of this meeting is authority letter Ex.10. This circumstance can be appreciated by two angles; firstly the accused – appellant admitted that the authority letter, Ex.10 was very much necessary for obtaining refund. At the same time the circumstance that the complainant and his uncle were eager to get the refund at the earliest. Now balancing these circumstances on touchstone of probability by a standard of prudent person, it becomes clear that had the accused – appellant, in fact, calling the complainant on 6th February, 1988 with authority

letter then there was, in fact, no reason why the complainant, who could obtain authority letter on 8th February, 1988, could not obtain the said letter on 6th February, 1988 for obtaining refund. Appreciating the evidence in this respect and defence of the accused, two things are established. First is that the complainant did visit the appellant on 8th February, 1988 and secondly, the defence of the accused that the complainant visited him on 6th February, 1988 and had not brought the authority letter became improbable on the yardstick of logic that there was no reason that the complainant would not bring authority letter on 6th February, 1988. Therefore, the demand made on 8th February, 1988 stands established and no doubt is raised in this respect. There may be variations between the narrations of the witnesses in the manner of occurrence of the incident, but the fact remains that there was no reason for the complainant to falsely implicate, the appellant in this case. Merely because, the complainant and his uncle felt that the appellant was pushing them hard to

visit frequently the office of the appellant, would not be sufficient reason to file a false complaint before the ACB Police Station especially when in search on 9th February, 1988 original authority letter dated 8th February, 1988 was found from the person of the complainant. The explanation offered by the accused – appellant in this respect that on 6th February, 1988, the complainant was scolded by him because he was depressed on account of sickness of his daughter and, therefore, on account of this vengeance complaint was filed appears not to be correct.

[**20**] In the manner and in the simplicity in which both the witnesses i.e. P.W.1 and P.W.2 have deposed before the Court suggest the guarantee of their truthfulness and only because some variations are found in expressing some facts by these witnesses, they cannot be branded as liar. For the credibility of the witnesses, learned APP rightly submitted that nothing is brought on record that either Investigating Officer or panch No.1 acted in a manner

prejudicial to the interest of the accused – appellant and taking interest in the cause of the complainant. In this regard, the observation of the Apex Court in the matter of **State of U.P. Vs. Zakaullah**, as reported in **(1998) 1 SCC 557** may be referred to wherein the Apex Court in para-10 observed that every citizen of India must be presumed to be an independent person until it is proved that he was a dependent of the police or other officials for any purpose whatsoever. Panch No.1 nor Investigating Agency has any axe to grind against the appellant to involve him in very serious case like present one. It must be remembered that there is documentary evidence supporting the say of both the witnesses. Panch No.1 proves panchnama Ex.16 in all respects, Investigating Officer is a supporting witness. No doubt he is raised in his evidence, therefore, if this evidence is appreciated in its totality that on 8th and 9th February, 1988, the complainant did visit the appellant and the appellant demanded the amount of bribe and accepted.

[**21**] True it is that from muddamal articles No.7 and 8, it it is found that the appellant had obtained the signatures of Divisional Accountant and Estate Manager on 5th February, 1988. With reference to contention that when the work was done, there was no occasion for the appellant to demand the amount of bribe, having appreciated the evidence and the circumstances appearing in this respect, it must be remembered that what was done on 5th February, 1988 was cancellation of the old cheque and re-validating the same, while the main work of issuance of the refund was still to be executed and for that the amount was demanded by the appellant. Moreover, it is nowhere coming from the evidence of the witnesses nor from the explanation offered by the appellant that the fact that the old cheque was cancelled and the same was re-validated was conveyed to the complainant and that complainant was very well within the knowledge that these orders are passed on 5th February, 1988. Therefore, it could not be said that the appellant had no cause for demanding the amount of bribe. On the contrary it

appears that on 5th February, 1988, when the re-validation of the cheque and cancellation of the old cheque had already taken place and when the new cheque was to be issued, circumstances balances towards the prosecution case that the appellant was sure that he was in a position to give refund amount which again leads to believe that the demand of bribery was made by the appellant. The circumstances, therefore, favour the case of the prosecution then to the case of the defence. The present facts of the case are totally different from the facts of the case of the decision of the Apex Court in the matter of **Ganga Kumar Srivastava Vs. State of Bihar**, as reported in **(2005) 6 SCC 211**, relied upon by the learned advocate for the appellant. As per the facts of the said case alleged, demand was made for electric connection on 25th June, 1985 and on 28th June 1985 and on facts, the Courts found that the connection was given by the accused to the complainant on 22nd June, 1985 and, therefore, on those circumstances, the Apex Court came to the conclusion that there was no cause for demand of

bribery. But as aforesaid in the present case, scenario is all together different.

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[**22**] Considering and appreciating the evidence of witnesses and even taking into account the explanation offered by the accused, it emerges crystal clear that the authority letter which is at Ex.10 is the kingpin of the whole episode. It must be noted that it is not the case of the prosecution only, but it is the case of the accused in explanation offered by him that for obtaining refund by the complainant on behalf of his uncle, the authority letter of his uncle giving authority to receive the amount of refund was absolutely necessary. Now this vital point if appreciated with attending circumstances and when credibility of witnesses is taken into consideration then the degree of probability of the prosecution case enhances. Now in this connection, when it is admitted by the appellant that the authority letter was necessary and,

therefore, he had entered into of hot exchange with the complainant on 6th February, 1988, it becomes necessary to examine the role played by each concerned in respect of this authority letter. In this respect, it must be remembered that certain presumption arises from certain facts and establishment of certain facts depends upon the degree of probability of having it existed. Again the standard of such appreciation would be of prudent person acting in any important matter concerning him. Even if it is taken into consideration the explanation of the accused, it is found very clumsy and not throwing light on the material aspect of the matter. Important question is that whether the authority letter was demanded by the appellant or not. The say of the appellant is, he demanded the latter, but the complainant said that the same was lying in Luna and that he would bring it. Now, if in this connection if we see the prosecution evidence, it is established by the cogent evidence that before delivering the cheque of refund though Ex.7 application was prepared and

signed by the complainant, but the authority letter was not demanded by the appellant. If the authority letter was very much necessary, the conduct of prudent man would be to ask first about the authority letter and then to deliver the cheque. The authority letter as per the explanation of the accused was necessary. So if the explanation of the accused is taking into consideration, as against the prosecution evidence in this respect, it becomes clear that the appellant delivered the cheque of refund to the complainant without obtaining the authority letter and if the accused – appellant has delivered as per his say in explanation, the cheque before obtaining authority letter, then his conduct would be unnatural and the whole explanation of the appellant as to the incident occurred on 9th February, 1988 would become improbable. While the prosecution has proved by cogent evidence that according to the accused – appellant, the complainant inquired from the appellant about the authority letter, but the same was refused on the ground that that was not

then necessary. In ordinary course of business, what a prudent man can do that he would direct the complainant first to bring the authority letter and then to deliver the cheque and he would not allow the explanation of the complainant that the said authority letter was lying in luna and he would bring the same afterwards and without the authority letter, the appellant would deliver the cheque of refund. This is a sheer improbability in the explanation of the accused. But what is found from the prosecution case is in the pretext of the authority letter though on 5th February, 1988, the cancellation of the cheque was done and it was revalidated, the complainant was asked by the appellant to come after some days with authority letter and to obtain refund. It was otherwise, not necessary for the complainant to get the authority letter prepared and to keep with him. Again this circumstance renders, the explanation of the accused – appellant improbable that complainant visited the appellant on 6th February, 1988. Therefore, the circumstances interwoven in

the case through the evidence of prosecution and by the explanation of the accused are very important to be appreciated and while web of circumstances are unveiled, it is found that either the direction of the appellant to bring authority letter was a pretext only to obtain bribe or if the same was necessary, it remains unexplained by the accused – appellant that why the authority letter was not insisted upon by him before delivering cheque. In any case, the explanation offered by the accused on two facts that the complainant met him on 6th February, 1988 and that on 9th February, 1988, the complainant told him that the authority letter was lying in Luna and that he would bring the same afterwards, appears to be improbable. It must be noted that the prosecution is able to prove the fact that the original authority letter was found from the shirt pocket of the complainant. When complainant was prepared to sign the application Ex.7 and the receipt as well, when he was prepared to follow the direction of Shri Topiwala, it is not understood that why the complainant would not

handed over the authority letter to the appellant, if the same was demanded by the appellant. It could not be inferred in any case that the complainant used the authority letter as a pretext of making pre-arranged signal. This is so because, even otherwise also complainant would have given pre-arrange signal without using this pretext. Therefore, explanation offered by the accused appears not to be reasonable and correct.

[**23**] In this view of the matter, when the evidence is considered and appreciated threadbare, it clearly appears that there is no possibility of the second view as has been sponsored by the accused – appellant. This is not the case of two views. The two views arises in a criminal trial only when while appreciating the evidence on record, when there is possibility and reasonable probability of the second view arising, either from the explanation of the accused or from the prosecution case itself, no second view of the matter is at all possible from

the evidence of prosecution in this case and the explanation offered by the accused appellant is found to be improbable and, therefore, the facts of the present case completely differs from the facts of the case of the decision of the Apex Court in the matter of **T. Subramanian Vs. State of T.N.**, as reported in **(2006) 1 SCC 401**.

[**24**] Very important aspect again which is required to be considered is an application Ex.7 which came to be written admittedly by the accused – appellant upon the direction issued by Shri Topiwala, Divisional Accountant. With reference to the authority letter Ex.10, application Ex.7 has important implications. Undoubtedly, it is an admitted fact that as soon as complainant and panch No.1 reached in the office of the appellant, the appellant went to the chamber of Shri Topiwala came back and asked the complainant and panch No.1 that they were summoned by Shri Topiwala. The appellant accompanied the complainant and panch No.1 in the chamber of Shri Topiwala where Shri Topiwala

directed the complainant to give an application for issuance of new cheque and all the three, thereafter, came back to the table of the appellant. What is required to be considered is, Shri Topiwala, Divisional Accountant, nor Estate Manager Shri Shah referred to the authority letter, which was insisted upon by the appellant since the beginning. This fact requires to be viewed with two consequences, first consequence is the authority letter was not necessary and the application at Ex.7 was only necessary. Had the authority letter was really required then Shri Topiwala would have ensured that the complainant had that authority letter. However, it is the case of the appellant also that he had insisted for the authority letter. What is referred to above necessarily indicate that Ex.10 authority letter was not necessary and it was a pretext on the part of the appellant to demand the bribe from the complainant. This circumstance again renders the say of the appellant improbable that the complainant visited the office of the appellant on 6th February, 1988. The second

consequence of the above said fact is, Shri Topiwala did not refer authority letter because the handing over of the cheque was the responsibility of senior clerk i.e. appellant and it was not the duty of Shri Topiwala to see that the cheque is delivered to the claimants or anybody else on his behalf and it was within then discretion of the senior clerk to deliver the cheque to somebody else than the claimants. If that be so then also the explanation of the accused that Shri Topiwala delivered the cheque to the complainant appears to be improbable. However, in any view of the matter, therefore, the prosecution case is required to be believed that the accused – appellant delivered the cheque to the complainant after accepting the amount of Rs.25/- and the authority letter was not demanded by him. There could not be any hesitation for the above reasons to accept the prosecution case.

[**25**] Now coming to the seizure of Articles No.16 and 17 by panchnama Ex.17 drawn at 19.00 hours, the defence is, had the cheque been

delivered by the appellant to the complainant then the cheque book article No.17 must have been lying on the table of the appellant and would have been seized by panchnama Ex.16. In absence of this seizure, while panchnama Ex.16, according to the prosecution case becomes doubtful. In this respect, it must be borne in mind that when raid was carried out, according to evidence of Investigating Officer, he directed the appellant – accused to produce all necessary papers relating to the case of the uncle of the complainant and then the appellant produced certain documents which were seized by panchnama Ex.16 and the seizure memo was prepared. Investigating Officer could not be expected to be expert to verify at the movement that all the papers relating to the case of the complainant were produced before him. True that the panch No.1 in his cross-examination submits that the table of the appellant was clear after raid was over and nothing was lying on the table. But this circumstance would not suggest for a moment that only on account of this, it could be inferred

that the cheque was delivered by Shri Topiwala to the complainant. Only when Investigating Officer verified the papers seized and found that the cheque memo register and cheque book were not in the papers seized and on investigation, it was found that those two documents were lying with Shri Topiwala, he draw a panchnama and seized those documents. This is not the circumstance created the doubt in prosecution case. Likewise, there was no meaning at 19.00 hours to examine those documents in ultra violet lamp to find out the marks of anthracene powder on cheque book, article No.17. This is not fatal to the prosecution case more particularly in view of the creditworthy evidence of the prosecution and as discussed in earlier para that from the circumstances established, it could only be inferred that the cheque must have been delivered by the appellant to the complainant. We hardly find any cast iron prosecution case. The learned trial Judge, therefore, rightly observed that in view of the worthy evidence of the prosecution, this circumstance is not capable to render the

weighty evidence unbelievable.

[**26**] Learned advocate for the appellant relied upon two decisions one of the Division Bench of this Court, in the matter of **Nathalal Govindji Vaghela Vs. State of Gujarat**, as reported in **1979 (2) GLR 190** wherein Division Bench of this Court recommended the use of phenolphthalein powder in place of anthracene powder as to render the evidence more scientific. In the decision of the Apex Court, in the matter of **Ganga Kumar Srivastava Vs. State of Bihar**, as reported in **(2005) 6 SCC 211**, wherein the Supreme Court observed that phenolphthalein powder was not used and the matter rested on oral evidence. In this respect, it must be observed that the Division Bench of this Court, in the matter of **Nathalal Govindji Vaghela Vs. State of Gujarat** (Supra) has recommended the use of phenolphthalein powder, but nowhere it is observed that the same is a mandatory requirement. Likewise in the decision of the

Hon'ble Supreme Court in the matter of **Ganga Kumar Srivastava** (Supra), the Apex Court observed that oral testimony was not believable and the complainant could not support the prosecution case. In these circumstances, the Apex Court observed that had the concerned Investigating Officer utilized the phenolphthalein powder, the evidence would have become more scientific. In the said decision, it appears from the fact that even anthracene powder was not used. In the present case, oral evidence as to the finding of marks of the anthracene powder is credible and trustworthy as aforesaid. Omission on the part of Investigating Officer to demarcate those anthracene powder marks would not render the prosecution case, improbable and these circumstances certainly would not be fatal to the prosecution case. Necessary, it is to refer to the decision of the Apex Court in this respect, in the matter of **State of U.P. Vs. Zakaullah**, as reported in **(1998) 1 SCC 557**, wherein in para-11 and in para-13, the Apex Court observed as under:

“**11**. The most important evidence is that of PW 4 Harendra Singh Sirohi, the Superintendent of Police who arranged the trap. We must mind the fact that he had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer. He made arrangements to smear the phenolphthalein powder on the currency notes in order to satisfy himself that the public servant had in fact received the bribe and not that currency notes were just thrust into the pocket of an unwilling officer. Such a test is conducted for his conscientious satisfaction that he was proceeding against a real bribe-taker and that an officer with integrity is not harassed unnecessarily.”

“**13**. The reasoning of the High Court that reliability of the trap was impaired as

> the solution collected in the phial was not sent to the Chemical Examiner is too puerile for acceptance. We have not come across any case where a trap was conducted by the police in which the phenolphthalein solution was sent to the Chemical Examiner. We know that the said solution is always used not because there is any such direction by the statutory provision, but for the satisfaction of the officials that the suspected public servant would have really handled the bribe money. There is no material discrepancy in the evidence regarding preparation of recovery memo and the minor contradiction mentioned by the learned Single Judge is not worth considering."

[**27**] Thus, what role the anthracene powder or phenolphthalein powder has to play in such cases is clear from the above observations. When oral evidence is found credible in this respect the

question of not using of phenolphthalein powder would not arise at all. Criminal trials can be established by oral evidence. In the present case, there is voluminous documentary evidence to support the oral evidence of witnesses. The credibility of the witnesses is found unimpeachable. There is no reason that why all the prosecution witnesses would join hands together to frame up a case against the appellant that to the impression for which complainant carried that the appellant pushed him hard to and fro to his office for the refund. Use of the phenolphthalein powder is not a *sine qua non* in prosecution under the Prevention of Corruption Act.

[**28**] By oral evidence, when it is found that anthracene powder marks were found in the hands of the appellant, in the shirt pocket of the appellant and when recovery of muddamal currency notes was proved, so far as Section 161 of Indian Penal Code is concerned, the presumption under Section 4(1) arises, this presumption is not

dislodged by the accused – appellant as stated above. The explanation of the accused offered by him does not inspire any confident in view of the weighty evidence of the prosecution. Though no explanation is offered as to the recovery of the money. True it is that it is the principle of law that mere recovery of the muddamal amount is not sufficient to establish guilt against the accused, but in the present case along with the recovery, so many other factors are established including the finding of the anthracene powder marks on the hands of the appellant and the acceptance of bribe amount by the evidence of independent witnesses. When no creditworthy to explanation forthcoming from the appellant – accused, the evidence of the prosecution case that he was caught red handed with muddamal currency notes and anthracene powder marks on a hand then the case of the prosecution is *res ipsa laquitor*. Things speak for itself and nothing more requires to be seen.

[**29**] So far as the contentions that no other witnesses from the department of the appellant is examined. It must be observed that Section 134 of the Indian Evidence Act speaks about the quality of the evidence and not the quantity. The question, therefore, always is, whether witness who is not examined, was a material so as to draw adverse inference against the prosecution. To prove a fact and relevant fact and fact in issue, the prosecution may examine the witness to its satisfaction and in appreciating the evidence, if the same is found trustworthy and establishing a fact in issue or relevant fact, it could not be said that yet more witnesses material to prosecution, were required to be examined. True it is that when the witnesses which have been examined by the prosecution falls short to establish a fact and still the witnesses available and not examined by the prosecution, certainly adverse inference can be drawn against the prosecution. In the present case, the prosecution examined two independent witnesses to prove raid from beginning to end and that none

examination of more witnesses would not have any adverse affect on the prosecution case. Reliance can be placed on the decision of the Apex Court in the matter of **Pohlu Vs. State of Haryana**, as reported in **(2005) 10 SCC 196** and in the matter of **Chaudhari Ramjibhai Narasangbhai Vs. State of Gujarat and others**, as reported in **(2004) 1 SCC 184**.

[**30**] In view of the above, when examining the case and re-appreciating the evidence on record from all possible angle when it is found that the prosecution has established the case beyond reasonable doubt and that the explanation offered by the accused is not probable, there is no merits in this appeal so far as the conviction imposed by the trial Court is concerned. No exception can be made in respect of the judgment and order of conviction of the trial Court.

[**31**] However, the alternative arguments advanced by learned advocate for the appellant in

respect of the quantum of punishment is required to be taken into consideration. It is submitted that the appellant has family to maintain and he shoulders responsibility of his three children and his wife. He is also shouldering responsibility of two younger brothers and the parents and he has no antecedent nor any black spot in his service carrier of sixteen years. It is further submitted that the incident is occurred on 9th February, 1988, almost eighteen years before, the amount of bribe involved in the case is meager and is of Rs.25/-. The appellant at present is hand to mouth and today, he is about 60 years of the age and almost at the brink of the end of his life. If he is undergoing long term of imprisonment, he is likely to suffer a dire setback which would not be recoverable. In these circumstances, it is submitted that the sentence of the imprisonment imposed upon the appellant be reduced already undergone and in some Supreme Court decisions, this view is taken. Learned APP Mr.S.S.Patel on behalf of the State was also heard in this

respect.

[**32**] Having heard learned counsels about the quantum of punishment, it is made clear that having regard to the object of enacting provisions of Prevention of Anti Corruption Act, long lapse of time factor only is not the ground for mitigating quantum of sentence as this has now become a common phenomenon. For mitigating circumstances, the quantum of sentence is concerned, the observation made by the Apex Court, in the matter of **Shiv Nandan Dixit Vs. State of U.P.**, as reported in **(2003) 12 SCC 636** is referred to. In para-10 of the decision, the Apex Court observed as under:

> “**10**. Then it is argued on behalf of the appellants that the incident in question having taken place nearly 23 years ago, the appellants have already suffered sufficiently and we should take a lenient view of the matter and award a lesser sentence. We notice that the two

appellants who were government servants have since lost their jobs and all retiral benefits and the prolonged litigation has caused considerable loss and suffering. Bearing in mind the fact that both the appellants have crossed 60 years of age, we think it appropriate that the sentence of 1 year's RI imposed by the High Court should be further reduced to a period of six months. Therefore, for the reasons recorded hereinabove, we alter the sentence awarded by the High Court for offences punishable under Section 120-B IPC, Section 161 IPC, Section 5(1)(d) read with Section 5(2) of the Act to six months' RI. We do not think it is necessary to award separate sentences under other provisions of the Act for which they have been sentenced by the trial court. The sentence already undergone, if any, will be given set-off. The appellants are on bail. Their bail

bonds shall stand cancelled. They shall surrender to their bail bonds. The appeals are partly allowed."

[**33**] It appears that with the long lapse of time, the mitigating circumstances in this case, as pleaded by the learned advocate for the appellant are present in this case. The appellant was a government servant and his job benefits are deprived of him. He has personal circumstances also which makes this Court to consider the lesser punishment. When under Section 5(2) of the Prevention of Anti Corruption Act, 1947, this Court has discretion to award lesser punishment than minimum as prescribed for adequate reasons. The circumstances which the learned advocate for the appellant pleaded are the circumstances, in the humble view of the Court for reduction of sentence by which the object and purpose of enactment of the Prevention of Corruption Act can also be achieved. Each case stands on its own facts and this case also stands on its own particular facts and cannot be a precedent for

the other cases. In the matter of **B. C. Goswami Vs. Delhi Administration**, as reported in **AIR 1973 SC 1457**, the Apex Court in para-10 referring to the objects of the the Prevention of Corruption Act, and referring to the particular circumstances of that case, came to the conclusion that the ends of justice would meet if the fine imposed was raised to Rs.400/- from Rs.200/- and the sentence of imprisonment was reduced to that already undergone from one and half years imposed upon the accused. Like wise, in other decision of the Apex Court in the matter of **Tar Sem Lal Vs. State of Harayana**, as reported in **AIR 1987 SC 806**, the Apex Court while maintaining the conviction, reduced the sentence to already undergone by the accused. In the matter of **Vishu Nagnath Deshmukh Vs. State of Maharashtra**, as reported in **2001 Cri.L.J. 483**, the sentence came to be reduced to the period of imprisonment already undergone, in view of the smallness of amount involved in that matter and this is observed in para-3 of the said decision.

Like wise, in the matter of **T.M. Joseph Vs. State of Kerala**, as reported in **AIR 1992 SC 1922**, sentence of one year was reduced by the Apex Court for 15 days rigorous imprisonment on each count and this is observed in para-4 of the decision.

[**34**] Therefore, having regard to the peculiar facts and circumstances of the case, this Court is inclined to accept the submission made by learned advocate for the appellant to reduce the quantum of sentence of imprisonment, while maintaining the conviction and maintaining the amount of fine imposed by the judgment impugned in this appeal. For the offence punishable under Section 161 of the Indian Penal Code, no separate sentence is imposed upon the appellant, while for the offence punishable under Section 5(2) of the Prevention of Corruption Act, 1947, the appellant is sentenced to undergo simple imprisonment of one year and to pay fine of Rs.1,000/-. In humble view of this Court, the ends of justice would meet if the sentence of imprisonment of one year

which is imposed upon the appellant be reduced to the simple imprisonment of seven days.

[**35**] In view of the above, this appeal is partly allowed, while maintaining conviction awarded by the trial Court and also maintaining the amount of fine imposed upon the appellant, the sentence of simple imprisonment imposed upon the appellant is reduced and modified to seven days from one year simple imprisonment as imposed by the trial Court and, thus, the quantum of sentence of imprisonment is reduced to the above extent. The rest of the appeal of the appellant, except reduction of sentence of imprisonment stands dismissed. The appellant – accused is on bail and his bail bonds stand cancelled. In the facts and circumstances of the case, the appellant is granted time to surrender before the trial Court for serving of sentence upto 15/12/2006. The order passed by the trial Court in respect of muddamal is not interfered with. The muddamal called for by this Court be transmitted back immediately to the trial Court.

[J. R. VORA,J.]

(vijay)